(16,670.)
(16,685.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 168.

MRS. BETTIE ALLEN, INDIVIDUALLY AND AS EXECUTRIX, AND W. F. COLLINS, CO-EXECUTOR, OF THE SUCCESSION OF RICHARD H. ALLEN, DECEASED, PLAINTIFFS IN ERROR,

vs.

OGDEN SMITH, CO-EXECUTOR OF THE LAST WILL AND TESTAMENT OF RICHARD H. ALLEN, DECEASED, ET AL.

FILED SEPTEMBER 18, 1897.

No. 176.

OGDEN SMITH, INDIVIDUALLY AND AS EXECUTOR OF THE SUCCESSION OF RICHARD H. ALLEN, DECEASED, ET AL., PLAINTIFFS IN ERROR,

vs.

MRS WIDOW BETTIE ALLEN, INDIVIDUALLY AND AS TESTAMENTARY EXECUTRIX OF THE SUCCESSION OF RICHARD H. ALLEN, DECEASED, ET AL.

FILED OCTOBER 11, 1897.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 1, 1898.

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

Succession of RICHARD H. ALLEN. No. 12331.

J. F. Pierson for Mrs. Bettie Allen, executrix, and individually.
Henry Chiapella for J. B. and W. A. Turner, plaintiffs in error.
Henry Chiapella for L. F. Suthon, attorney for Smith heirs, plaintiffs in error.
Henry Chiapella for Clay Knobloch & Son, attorneys for Ogden Smith, executor succession Richard H. Allen, plaintiff in error.
Fenner, Henderson & Fenner, for J. L. Aucoin, administrator succession of Richard H. Allen.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C., on the sixth day of September, A. D. 1897.

TRANSCRIPT OF RECORD.

1 *Petition of W. F. Collins and Mrs. Bettie Allen.*

STATE OF LOUISIANA:

Eighteenth Judicial District Court, Parish of Lafourche.

Succession of RICHARD H. ALLEN. No. 1417, Probates.

The petition of William F. Collins, executor, and Mrs. Bettie Allen, executrix, of the last will and testament of the deceased, respectfully represents—

That they herewith file their final account of their administration of this estate and their proposed distribution of the assets as yet undistributed.

Petitioners aver that after the final settlement of the matters set forth in their said final account and the distribution in accordance therewith there will remain nothing for them to do further, unless at some future date the Congress of the United States should make an appropriation of moneys to pay the balance of the bounty money due under act of Congress for the sugar produced on the Rienzi plantation during the year 1894.

That in that event they will have the amount so paid to distribute to its legal owner, but that the adjudication of the owner of the portion of the bounty already paid will settle the matter as regards the balance due, and the payment of the same, when received, to its legal owner will be a mere ministerial duty, and will require no further account from petitioners; but as yet there is no
2 immediate prospect of receiving said balance due.

Petitioner- further aver that, as in the case of the first provisional account filed herein by them, they are yet unable to agree

with their co-executor, Ogden Smith, as to the distribution of the moneys of this estate, and that they are therefore forced to file a separate account from him, proposing what they deem a proper distribution of this estate under the last will and testament of the deceased and under the decrees of this court and of the supreme court of this State, interpreting same, and which they deem and hereby plead as *res adjudicata*.

Considering the premises, petitioners pray that their said final account be herewith filed as a part hereof, and that all the heirs and legatees of this estate be duly notified according to law of said filing, and that due notice be published of said filing, and that after due delay and legal proceedings the said final account be duly homologated and made the judgment of this court, and that distributions be ordered in accordance therewith, and for all and general relief, &c.

(Signed) BEATTIE & BEATTIE,
Attorneys of Petitioners.

Final Account of W. F. Collins and Mrs. Bettie Allen.

STATE OF LOUISIANA:

Eighteenth Judicial District Court, Parish of Lafourche.

Succession of RICHARD H. ALLEN. No. 1417, Probates.

Final account of William F. Collins, executor, and Mrs. Bettie Allen, executrix of the last will of the deceased.

The following debts and legacies have been paid:

Costs and debts set out in the two accounts heretofore filed by present accountants and their co-executor, Ogden Smith, said costs and debts being numbered in said accounts from 1 to 37	$5,218.59
Executor's commission to W. F. Collins	1,094.27
Attorney's fees to Messrs. Knobloch & Son	2,000.00
Attorney's fees to Beattie & Beattie	4,000.00
Legacy to Mrs. De Berry	500.00
" " " Baker	500.00
" " " Boyle	500.00
" " " Cragin	500.00
" " Walter Collins	200.00
" " Lizzie Harrison	150.00
" " Mat. Dickenson	150.00
" " Mrs. Cragin's two boys for English education	563.00
Taxes on Rienzi plantation for year 1894	1,348.81
Clerk's fees	32.40
Sheriff's fees	6.00
Clerk of supreme court	61.80
Clerk for transcript of appeal	65.60
Costs for printing briefs for Mrs. Bettie Allen and W. F. Collins, executors, before supreme court	45.00

Costs of brief of Ogden Smith in supreme court.....	46.59
Amount reserved for future costs and for bounty expenses and for any deficit in crop of year 1895.....	2,072.43
Total.....	$19,054.49

This amount was paid and reserved out of the cash assets of the estate as follows:

Cash in Canal bank.....	2,946.07
" " La. nat. bank.....	18,000.92

4

Cash in Whitney nat. bank.....	9,189.58
" " New York in hands of Latham, Alexander & Co..	545.64
" " residence.....	2,628.06
" for sugar sold before death collected after.....	17.45
" " " " after death.....	2,255.00
" " old iron and lumber inventoried.....	308.00
" " note of Fred W. Smith.....	500.00
Interest collected from Boudreaux & Lasseigne.....	25.00
Amount collected from syndic of J. B. Lalande.....	138.77
Total.....	$36,554.49
Deducting costs and debts as above.....	19,054.49
Leaves ballance for distribution.....	17,500.00

This amount has been distributed to the heirs and legatees in accordance with the judgment of the supreme court, as follows:

One-third to T. H. Allen.....	5,833.33⅓
One-sixth to W. A. Turner.....	2,916.66⅔
One-sixth to J. B. Turner.....	2,916.66⅔
One-fifteenth to Gaston Smith.....	1,166.66⅔
One-fifteenth to Mrs. Nellie Houchens.....	1,166.66⅔
One-fifteenth to Ogden Smith.....	1,166.66⅔
One-fifteenth to Thomas A. Smith.....	1,166.66⅔
One-fifteenth to Fred W. Smith.....	1,166.66⅔

But the latter received his note as cash for $500.00, and thus received in reality only $666.66⅔ in actual cash.

Accountants have turned over to the legatees of the Rienzi plantation the said plantation or its proceeds (it having been sold by consent) in the following proportions to the following persons:

5

One-half	to Mrs. Bettie Allen.
One-tenth	" R. H. Allen, Jr., for his family.
One-tenth	" T. H. Allen, Jr., " "
One-tenth	" Harry Allen " "
One-tenth	" Mrs. J. C. Latham.
One-fiftieth	" Mrs. Nellie Houchens.
One-fiftieth	" Ogden Smith.
One fiftieth	" T. A. Smith.
One-fiftieth	" Gaston Smith.
One-fiftieth	" Fred W. Smith.

The claim of the deceased against the United States Government for losses, &c., during the late civil war will be turned over in the following proportions to the following persons:

One-fifth	to	R. H. Allen, for his family.
One-fifth	"	T. H. Allen, Jr., for his family.
One-fifth	"	Harry Allen, for his family.
One-fifth	"	Mrs. J. C. Latham.
One twenty-fifth	"	Mrs. Nellie Houchens.
One twenty-fifth	"	Ogden Smith.
One twenty-fifth	"	T. A. Smith.
One twenty-fifth	"	Gaston Smith.
One twenty-fifth	"	Fred W. Smith.

Accountants, however, wish to note here that they have been informed and believe that the said claim is being now prosecuted in the Court of Claims of the U. S., and that the attorneys prosecuting same are, by agreement with the deceased, entitled to one-half of whatever sum may be recovered against the United States.

6 Accountants will turn over the special legacy of the gold watch to the father of the legatee, who is a minor.

In accordance with the order of this court on the executors of this estate, accountants will now propose a distribution of the proceeds of the crop on the Rienzi plantation for the year 1894, and will give to Mrs. Bettie Allen the net proceeds of said crop, counting from the death of the testator, as ordered by final decree of the supreme court in this matter. Accountants consider the costs which are to be deducted from the gross proceeds of said crop to find the net proceeds as fixed by final decree of this court and of the supreme court at the amount set down for same in the account of Ogden Smith, co-executor, first filed and passed on by said courts, at $19,730.26

The gross proceeds of said crop were.....	$56,072.58
Deduct costs, as aforesaid.....	19,730.26
Balance to go to Mrs. Bettie Allen....	$36,342.32

Now, accountants aver that while the said judgments fixing said amount of costs are *res adjudicata* and as such binding on all the parties thereto—executors, heirs, legatees, and creditors—still they are willing, without waiving any of their rights to the plea of *res adjudicata*, that the additional charges and expenses, as set out in the statement annexed hereto and marked "X," amounting to two thousand seven hundred and sixty-six and $\frac{13}{100}$ dollars, should be also charged to said crop as a deduction from the gross proceeds as having been made for the purpose of preserving and selling said crop, all since the filing of the said account of Ogden Smith

7 fixing the aforesaid amount of expenses of the crop, provided said balance is at once without further litigation paid over to the legatee, Mrs. Bettie Allen.

Allowing these additional expenses on this crop would leave the net proceeds to — paid Mrs. Bettie Allen at once $33,576.19.

The crop on the Rienzi plantation for the year 1895, after ac-

countants filed their provisional account herein, proposing to turn said plantation over in kind to the legatees thereof, in which account accountants especially said that Mrs. Bettie Allen refused to cultivate the plantation that year for her account, resulted as follows:

Gross proceeds	$30,974.05
Costs of making, selling, and harvesting same	31,890.24
Net loss on said crop	916.19

Accountants propose to pay this loss out of the amount reserved for this purpose from the general cash assets of the estate.

Accountants have received from the United States Government portion of the bounty money granted by Congress for sugar produced on the Rienzi plantation for the year 1894, the portion received being all that this estate is entitled to, out of the appropriation made by Congress for this purpose, but not being the full amount allowed, no appropriation having been made for the balance.

The amount received is	$11,569.35
From this is to be deducted the necessary expenses incurred and expended in making and preserving proof of this claim, services of bounty bureau, affidavits, copies of accounts, sales, &c., all amounting to	321.70
Balance	$11,247.65

This amount accountants propose to turn over to Mrs. Bettie Allen as the owner of the net proceeds of the crop of 1894 on the Rienzi plantation, under the will of the testator and the decree of supreme court.

Executors' Commissions.

Gross proceeds of crop of 1894 without bounty		$56,072.58
Gross proceeds of crop of 1895		30,974.05
Bounty on crop of 1894		11,569.35
Total		$98,615.98
Two and one-half per cent of this	$2,465.39	
One-third of this amount is due W. F. Collins, executor, the only one of the three executors not a legatee	$821.79	

This accountants propose to pay out of the amount reserved for costs, &c., from general assets of estate.

(Signed) BEATTIE & BEATTIE,
Att'ys of Accountants.

Statement "X."

C. Perrillat		$215.00
R. R. McBride		20.95
J. W. Trotter		4.70
C. Flexlander		59.25
One dozen collars		7.50
	Ogden Smith	7.50
9	March pay-roll (portion on crop of 1894)	81.85
	Mrs. J. McCormick	199.40
Baker & Lepine		122.09
Home Insurance Co.		385.47
F. McCulla		31.25
April pay-roll (portion on crop of 1894)		21.90
Mrs. J. McCormick		92.00
August pay-roll (portion on crop of 1894)		8.70
September pay-roll (portion on crop of 1894)		22.00
C. Perrillat		68.40
October pay-roll (portion on crop of 1894)		86.75
James Beary, sheriff, for produce tax		544.85
F. W. Webster, brokerage on crop of 1894		349.58
Boudreaux & Lasseigne		436.99
Total		2,766.13

Order.

Let the within account be filed and due notices given and published in accordance with law.

Done in chambers, at the parish of Lafourche, this the 17th day of August, 1896.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Service of notice of the within final account accepted and all further notification waived and dispensed with.

(Signed) L. F. SUTHON, *Att'y of Smith Heirs.*
HENRY CHIAPELLA,
Attorney for Turner Heirs.
THOMAS A. BADEAUX,
FENNER, HENDERSON & FENNER,
Attorneys for Harry, Thomas H., Jr., R. H. Allen, Jr., Mrs. J. C. Latham.

Thibodaux, August 29th, '96.

Filed August 18th, 1896.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

10 *Notice to Newspaper of the Filing of the Final Account.*

THE STATE OF LOUISIANA:

Eighteenth Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417, Probates.

Whereas William F. Collins, executor, and Mrs. Bettie Allen, executrix, of the last will and testament of the said R. H. Allen, of the parish of Lafourche, having filed a final account of their administration of the aforesaid estate:

Now, therefore, all persons are hereby warned and notified to file their oppositions in writing to the said account with the clerk of said court, at his office, in the town of Thibodaux, ten days after the first publication hereof; otherwise the said account will be approved and homologated in accordance with law.

Witness my hand and the impress of the seal of my
[L. S.] office this the 18th day of August, A. D. 1896.

(Signed) P. F. LEGENDRE,
D'y Clerk of said Court.

Filed Aug. 18th, 1896.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Petition Accompanying Final Account of Ogden Smith, Co-executor.

THE STATE OF LOUISIANA, }
Parish of Lafourche. }

18th Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417, Probates.

11 To the honorable the eighteenth judicial district court of the State of Louisiana, sitting in and for the parish of Lafourche:

The petition of Ogden Smith, of the parish of Lafourche, respectfully represents—

That as one of the three executors of the last will and testament of Richard H. Allen, now deceased, and late of the parish of Lafourche, State of Louisiana, he herewith files a final and complete account of his administration as such co-executor, filing herewith as part of said final account (1) statement "C," showing amount of gross proceeds of crop of 1894; (2) statement "C 1," being a statement of the amount of taxes for 1894 and of expenses to make the said crop that were paid after the death of testator out the unwilled cash then being the only available funds, but which amount must now be restored to unwilled cash out of proceeds of the crop; (3) statement "C 2," being an exhibit of the expenses paid prior to the death of testator and must be deducted from gross proceeds of crop of 1894; (4) statement "D," showing the total gross proceeds of the

crop of 1895 and of expenses thereon, including taxes of 1895, showing a deficit of $748.19, which is properly chargeable to net proceeds of crop of 1894.

Petitioner also files herewith the following books, viz., (1) four check books, with stubs attached; (2) two day books; (3) two ledgers, marked respectively "B" and "C," and (4) the pay-roll book for Rienzi, these being all and the only books ever kept for account of the succession of said R. H. Allen. In said ledgers will be found a detailed statement of the personal account of Mrs. Bettie Allen.

Petitioner now opposes the so-called final account filed
12 August 18, 1896, in the matter of said succession, by his co-executors, Mrs. Bettie Allen and W. F. Collins, for the following, among other, reasons:

1. The item "Amount reserved for the future costs and for bounty expenses and for any deficit in crop of year 1895," for the reason that all cash advanced out of the unwilled cash which the supreme court has decreed belongs to the legal heirs who have not been cut off by the will must be restored by proceeds of crop of 1894 and by bounty money to the unwilled cash, which advanced funds to both the crop account and the bounty account, as is fully shown and detailed in petitioner's final account, filed herewith, and is made part of this opposition for greater certainty and for details.

2. Petitioner particularly opposes giving any part of the bounty money to Mrs. Bettie Allen. This money formed no part of the crop of 1894, is an unwilled asset, and must be distributed among the legal heirs who have not been cut off by the will, in accordance with petitioner's final account filed herewith.

3. Petitioner avers that Mrs. Bettie Allen never opposed the working of Rienzi during the year 1895 for her own account, and therefore it is but just and equitable that the deficit on that crop should be deducted from the net proceeds of the crop of 1894 and not from unwilled cash.

Wherefore petitioner prays that due public notice be given of his said final account; that all the legal heirs of the deceased testator and all the legatees named in his last will and testament be duly notified according to law of the filing of your petitioner's said final account, and your petitioner finally prays that after legal
13 delays and due proceedings the so-called final account filed in the matter of this succession by Mrs. Bettie Allen and W. F. Collins, co-executors, be rejected, and that your petitioner's final account filed herewith be maintained and be approved and homologated, and the funds on hand be distributed in accordance therewith, and that the foregoing opposition to said so-called final account filed by Mrs. Bettie Allen and W. F. Collins be maintained.

Petitioner prays for all and general relief.

(Signed) CLAY KNOBLOCH & SON,
Attorneys for Ogden Smith, Co-executor.

Order.

Let accompanying final account be filed and let due notice of the filing of same be given according to law.

Done and granted at chambers, parish of Lafourche, this 29th August, 1896.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Filed Aug. 29th, 1896.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

Final Account Filed by Ogden Smith, Co-executor.

THE STATE OF LOUISIANA, }
Parish of Lafourche. }

Eighteenth Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417, Probates.

14 Final account of Ogden Smith, one of the executors of the last will and testament of R. H. Allen, deceased.

I.

Assets.

The Rienzi plantation.

This plantation was, on the 29th January, 1896, turned over in kind to the legatees, viz: (1) Mrs. Bettie Allen, one-half thereof; (2) the wife and children of Thomas H. Allen, Jr., one-tenth thereof; (3) the wife and children of R. H. Allen, Jr., one-tenth thereof; (4) the wife and children of Harry Allen, one-tenth thereof; (5) Mrs. Louise Latham, one-tenth thereof; (6) Ogden Smith, one-fiftieth thereof; (7) Thomas Allen Smith, one-fiftieth thereof; (8) Gaston Smith, one-fiftieth thereof; (9) Fred W. Smith, one-fiftieth thereof; and (10) Mrs. Nellie Houchens, one-fiftieth thereof.

These legatees sold the plantation on the 29th January, 1896, to J. B. Levert and Emile U. Morvant, as per act before H. N. Coulon, notary, for $41,000.00, one-third cash and the balance in two equal installments, payable respectively at one and two years from date of sale, represented by notes secured by vendor's lien and privilege and special mortgage. As will appear by said act of sale, Mrs. Bettie Allen received her one-half of cash and notes on day of sale.

The other half of cash, to wit, the sum of..... $6,833.33⅓
And one note, due at one year, marked series "B"... . $6,833.33⅓
And one note, due at two years, marked series "B".... $6,833.33⅓

were deposited in the hands of the executors to await final decision of the supreme court of the State of Louisiana on the oppositions to provisional and so-called final accounts hitherto filed in the mat-

ter of the succession of R. H. Allen. Conformably to the final decision of the supreme court on said oppositions, No. 11998 of the docket of the supreme court, and to final decision in the matter of The Allen Heirs *vs.* J. B. Levert & *al.*, No. 12122 of the docket of the supreme court, and to family meetings held in the matter of the said Allen heirs, minors, in *Ex parte* R. H. Allen, Jr., No. 1475, and *Ex parte* Thomas H. Allen, Jr., No. 1476, on the docket of the eighteenth judicial district court, parish of Lafourche, and in *Ex parte* Harry Allen, No. 48092 on the docket of the civil district court, division E, parish of Orleans, and agreeably to the clauses in said act of sale of Rienzi plantation, the three executors procured from J. B. Levert and Emile U. Morvant, purchasers of said plantation, in lieu and stead of the two notes aforesaid of said purchasers, marked series "B," as aforesaid, without novation, their twenty-four several promissory notes in amounts and at maturities to suit the respective interests of the said Allen heirs and Smith heirs, legatees of the one-half of Rienzi plantation, as will appear by act of subdivision into coupon notes passed before George C. Preot, notary public, of Orleans parish, on the 31st July, 1896.

The executors distributed the cash, say.....	$6,833.33⅓
Less one-half of the fee paid Curtis & Walmsley, auctioneers, for securing purchaser for Rienzi	205.00
Net cash for distribution.....	$6,628.33⅓

This net balance ($6,628.33⅓) was divided into five parts of $1,325.66⅔ each, one part for the wife and four children of R. H. Allen, Jr., one part for the wife and four children of Harry Allen, one part for the wife and minor child of Thomas H. Allen, Jr., one part for Mrs. Louise Latham, and one part for the five Smith heirs, as follows:

1. To Mrs. R. H. Allen, Jr.....	$265.13⅓
To the minors of R. H. Allen, Jr., viz., Thomas H. Allen, Jas. Sedden Allen, Eleanor Kathrine Allen, and Jean Elizabeth Allen, to each $265.13 2/5, or, say, to the four the sum of.....	1,060.53⅓
	$1,325.66⅔

Out of the amount, $1,060.53⅓, going to the four children Messrs. Fenner, Henderson & Fenner retained fees and expenses amounting to $250.00, and the balance, say $810.53⅓, was paid over to R. M. Walmsley for premium bonds for said minors.

2. The same distribution was made to Mrs. Harry Allen and her four children, viz, Gratia Allen, Harry Allen, Jr., Robert W. Allen, and John L. Allen	$1,325.66⅔
3 To Mrs. Thomas H. Allen, Jr., one-half of $1,325.66⅔, or, say.....	662.83⅓
To the minor R. H. Allen, Jr., the other half, say...	662.83⅓
	$1,325.66⅔

Out of the amount, $662.83⅓, going to the minor R. H. Allen, Jr., Messrs. Fenner, Henderson & Fenner retained for fees and expenses $150.00, leaving a balance of $512.83⅓ due and owing the minor, which was paid over to R. M. Walmsley for premium bonds for said minor.

4. Mrs. Louise Latham entitled to $1,325.66⅔

5. The five Smith heirs are each entitled to one-fifth of $1,325.66⅔ or each to $265.13⅓, viz:

17	Ogden Smith	$265.13⅓
	Thomas Allen Smith	265.13⅓
	Gaston Smith	265.13⅓
	Fred. W. Smith	265.13⅓
	Mrs. Nellie Houchens	265.13⅓
		$1,325.66⅔

Amounts to be invested in premium bonds for account of the minors, as follows (fractions omitted):

1.	For 4 minors of R. H. Allen, Jr.	$810.52
2.	For 4 minors of Harry Allen	810.52
3.	For the minor child of Thos. H. Allen, Jr. (R. H. Allen)	512.83
	Total	$2,133.87

This amount ($2,133.87) was paid by the check of the executors on the Louisiana national bank, in favor of R. M. Walmsley, for premium bonds of the city of New Orleans, which were immediately turned over to Messrs. Fenner, Henderson & Fenner, attorneys of the tutor of said minors.

Memorandum.

The following amounts, to wit:

1.	Fees and expenses due by minors of R. H. Allen, Jr.	$250.00
2.	Fees and expenses due by minors of Harry Allen	250.00
3.	Fees and expenses due by the minor of Thos. H. Allen, Jr.	150.00
4.	Amount due Mrs. R. H. Allen, Jr.	265.13
5.	Amount due Mrs. Harry Allen	265.13
6.	Amount due Mrs. Thos. H. Allen, Jr.	662.83
7.	Amount due Mrs. Louise Latham	1,325.66
	Total	$3,168.75

18 was settled by check of the executors on Louisiana national bank for said amount, $3,168.75, in favor of Messrs. Fenner, Henderson & Fenner, attorneys of the parties in interest.

The five Smith heirs were each paid by separate check on the Louisiana national bank for $265.13 each.

The two notes, series "B," given as part of the purchase price of Rienzi plantation, each for $6,833.33⅓, or, say, the two together

amounting to a total of $13,666.66⅔, were subdivided as aforesaid, as per act passed before George C. Preot, notary, on the 31st July, 1896, into 24 notes, as follows:

1. Mrs. R. H. Allen, Jr., and her four children are each entitled to one-fifth of one-fifth of $13,666.66⅔, or $546.66⅔ each. Mrs. Thos. H. Allen, Jr., received two of the coupon notes at 1 and 2 years, each for $273.33⅓, marked series "B 1," making a total of.. $546.66⅔

   The four children of Thos. H. Allen received two coupon notes at 1 and 2 years, each for $1,093.33⅓, marked series "B 2," making a total of..... 2,186.66⅔

2. Mrs. Harry Allen and her four children are each entitled to one-fifth of one-fifth of $13,666.66⅔, or $546.66⅔ each. Mrs. Harry Allen received two coupon notes at 1 and 2 years, each for $273.33⅓, marked series "B 3," making a total of 546.66⅔

   The four children of Harry Allen received two coupon notes at 1 and 2 years, each for $1,093.33⅓, marked series "B 4," making a total of..... 2,186.66⅔

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3. Mrs. Thomas H. Allen and her child are each entitled to one-half of one-fifth of $13,666.66⅔, or $1,366.66⅔ each. Mrs. Thomas H. Allen, Jr., received two coupon notes at 1 and 2 years, each for $683.33⅓, marked series "B 5," making a total of... ..... 1,366.66⅔

   The child of Thos. H. Allen, Jr., received two coupon notes, each for $683.33⅓, marked series "B 6," making a total of 1,366.66⅔

4. Mrs. Louise Latham is entitled to one-fifth of $13,666.66⅔, or $2,733.33⅓. She received two coupon notes at 1 and 2 years, each for $1,366.66⅔, marked series "B 7," making a total of..... 2,733.33⅓

   All of the above-mentioned coupon notes were delivered to Mess. Fenner, Henderson & Fenner, the attorneys of the parties in interest.

5. The five Smith heirs are each entitled to one-fifth of one-fifth of $13,666.66⅔, or to $546.66⅔ each. They received coupon notes at 1 and 2 years, marked series "B 8, B 9, B 10, B 11, and B 12," each note for $273.33⅓, as follows:

   Ogden Smith, 2 coupon notes at 1 and 2 years, each for $273.33⅓, making a total of..... 546.66⅔

   T. A. Smith, same as Ogden Smith..... ..... 546.66⅔

   Fred. W. Smith, same as Ogden Smith..... ... 546.66⅔

   Gaston Smith, same as Ogden Smith..... 546.66⅔

20 Mrs. Nellie Houchens, same as Ogden Smith... $546.66⅔

Grand total $13,666.66⅔

which is equal to the two original notes of $6,833.33⅓, each marked series "B," and which have been cancelled.

II.

Assets—Cash, Exclusive of Proceeds of Crop of 1894 *&* 1895 *and of Bounty Money.*

Cash as per so-called final account hitherto filed:		
In La. national bank		$18,000.92
New Orleans Canal and Banking Co.		2,946.07
Whitney national bank		9,189.58
In hands of Latham, Alexander & Co		545.64
In safe at residence, instead of $2,628.06, as stated in so-called final account, should be		2,622.65
Proceeds one bbl. sugar and 1 pig		17.85
Proceeds 244 bbls. sugar		2,255.00
Total as shown on so-called final ac.		$35,577.71
Collected since filing so-called final account:		
From J. D. Babin on account		$8.16
From four mon on loan account		6.50
From Boudreaux & Lasseigne		25.00
From Eugene Soniat, syndic J. B. Lalande		138.77
Total cash, exclusive of bounty & crop		$35,756.14
Out of which has been paid all the liabilities and legacies, fully detailed in so-called final account and approved by the court, say	$16,661.17	
Less fee of John S. Billiu, attorney of absent heirs, disallowed	500.00	
	$16,161.17	
Balance	19,594.97	
Total	$35,756.14	$35,756.14
To this balance, say		$19,504.97
must be added:		
1. F. W. Smith's note		500.00
2. The following errors in items of liabilities, as detailed in the so-called final account:		
Item 21. J. W. Knobloch	$56.20	
Should be	46.59	
Amount of error	9.61	9.61
Item No. 31. Pay-roll to date of death, instead of	$896.45	
Should be	839.95	
Amount of error	$56.50	56.50

3. Must be restored to unwilled cash the amounts advanced to crop account of 1894, which crop was not sold at the time the items appearing in so-called final account were made up, as follows:

Item 16.	L. Keefe	469.72	
" 18.	W. F. Collins' bill	11.80	
" 25.	Cooperage	44.10	
" 28.	Stauffer, Eshleman & Co	296.11	
" 30.	Standard Oil Co.	109.07	
" 31.	September pay-roll to date of death, but paid after the death	839.95	
22			
Item 34.	T. A. Smith	500.41	
" 35.	Louis Juilliat	166.00	
" 36.	Ogden Smith	171.65	
" 37.	Charles Flextanner	450.67	
" 49.	State and parish taxes, 1894	1,348.31	
	Total to be restored out of crop of '94.	$4,407.79	4,407.79

4. Must also be restored to unwilled cash the amount advanced to bounty account and properly chargeable to bounty-money account, the item appearing on so-called final account.

Item 4.	L. J. Souer		15.00
	Total balance, cash		$24,583.87

Out of this cash must be deducted—

1.	Errors in item of so-called final account: Item No. 22, James Beary, sheriff, instead of $1.30 should be $12.70; error.	$11.40
Item No. 32.	C. J. Barker, $35; should be $84.60; error is	49.60
Item No. 36.	Ogden Smith, instead of $123.33 should be $171.65; error is	48.32
2.	Legacy to minors of Mrs. Cragin	563.00
3.	Briefs of Ogden Smith, executor	56.20
4.	Briefs, Mrs. Allen & Collins	45.00
5.	Beattie & Beattie, costs paid by them	127.40
6.	Due Mrs. Allen at time of death	14.75
7.	Steamer Lafourche	9.20
8.	Thibodaux Bridge Co.	48.34
23 9.	H. Tetreaux	9.25
10.	Opening & closing tomb	5.00
11.	T. A. Smith, expenses travelling and assisting in preparing this account	25.00

12. Reserved for costs and final discharge, including $75.00 for travelling expenses of accountant	250.00	
13. John B. Taylor, Comet	1.50	
	$1,263.96	
Net balance for distribution	23,319.91	
	$24,583.87	

This net balance ($23,319.91) is to be distributed among the legal heirs who have not been cut off by the will, viz:

1. Estate of Thomas H. Allen, Sr. (deceased brother of testator), represented by J. Louis Aucoin, of the parish of Lafourche, administrator, is entitled to one-third of $23,319.91, or, say		$7,773.30⅓
June 8, '96, paid on account	$5,833.33⅓	
Balance due	1,939.97	
	$7,773.30⅓	
2. The two children of Mrs. Myra Turner (deceased sister of testator) are each entitled to one-third of $23,319.91, or both together		7,773.30⅓
William A. Turner, entitled to one-half of $7,773.30⅓	$3,886.65⅙	
June 8, '96, paid on account	2,916.66⅔	
Balance due him	969.98½	
John Turner, entitled to one-half of $7,773.30⅓	$3,886.65⅙	
June 8, '96, paid on account	2,916.66⅔	
Balance due him	$969.98½	
24 3. The five children of Mrs. Cynthia Smith (deceased sister of testator) are each entitled to one-fifth of one-third of $23,319.91, or, say, to each		$1,554.66⅕
June 8, '96, each received		1,166.66⅔
Balance due to each		$387.99⅙
To Ogden Smith	$387.99⅔	
To Fred W. Smith	387.99⅔	
To Gaston Smith	387.99⅔	
To Thos. A. Smith	387.99⅔	
To Mrs. Nellie Houchens	387.99⅔	
	1,939.97	
The five had hitherto been paid	5,833.33⅓	
	$7,773.30⅓	

MEMORANDUM.—Still due to:

1. Estate Thos. H. Allen, Sr.	$1,939.97
2. John Turner	969.98½
3. William A. Turner	969.98½
4. Ogden Smith	387.99⅖
5. Fred W. Smith	387.99⅖
6. Gaston Smith	387.99⅖
7. Thomas A. Smith	387.99⅖
8. Mrs. Nellie Houchens	387.99⅖
Total	$5,819.91

III.

The Bounty Money.

Assets.

25 Received from the United States Government for bounty on sugar crop made on the "Rienzi" plantation in 1894, by check of the U. S. Treasurer on the assistant treasurer in New Orleans and deposited in the La. nat. bank, in New Orleans, dated August 3rd, 1896, for the sum of eleven thousand five hundred and sixty-nine $\frac{35}{100}$ dollars $11,569.35

This fund is chargeable with the following amounts paid by the executors:

Oct.	8, 1894.	L. J. Souer, bounty bureau	$15.00
Nov.	16, 1894.	L. J. Souer, " "	29.45
Dec.	6, 1894.	L. J. Souer, " "	27.90
"	8, "	L. J. Souer, " "	27.55
Jan.	12, 1895.	L. J. Souer, " "	69.30
"	26, "	Charles Janvier, manager bounty bureau	43.75
Feb.	12, "	L. J. Souer, bounty bureau	90.00
Apr.	24, "	L. J. Souer, " "	6.65
		Lafourche Comet, printing	1.25
		T. A. Smith, two trips to N. O.	12.00
		Expenses on sugar samples	3.85
		Chas. J. Barker, notarial fees	10.00
			$336.70
		W. F. Collins, co-executor, his commission, one-third of 2½ % on $11,569.35	96.41
			$433.11
		Net balance for distribution	11,136.24
			$11,569.35

Net balance for distribution as aforesaid $11,136.24

26 Net amount bounty money for distribution $11,136.24

The bounty money, being an unwilled asset, must be distributed among the legal heirs who have not been cut off by the will, viz:

1. To the estate of Thos H. Allen, Sr., a deceased brother of testator, represented by J. Louis Aucoin, of the parish of Lafourche, administrator, one-third of $11,136.24....	$3,712.08	3,712.08
2. To the two children of Mrs. Myra Turner, a deceased sister of testator, to each one-half of one-third, as follows:		
John B. Turner.....	$1,856.04	
Wm. A. Turner.....	1,856.04	
	3,712.08	3,712.08
3. To the five children of Mrs. Cynthia Smith, a deceased sister of testator, one-fifth of one-third, as follows:		
Ogden Smith.....	$742.41 3/5	
T. A. Smith.....	742.41 3/5	
Gaston Smith.....	742.41 3/5	
Fred W. Smith.....	742.41 3/5	
Mrs. Nellie Houchens.....	742.41 3/5	
	$3,712.08	3,712.08
		$11,136.24

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IV.

Crops of 1894 *and* 1895.

The clause in testator's will which has reference to the crops on Rienzi plantation *in* in these words: "As I fear property will be very low I give my executors five years to work for a good price (for sale of Rienzi); in the meantime that they are waiting to sell, the place can be rented or worked *so as to pay all taxes and other charges, any over that to go to Mrs. Allen's credit.*"

Construing this clause, the supreme court of Louisiana said: "The *net proceeds* belong to the wife from the time of the death of the testator." 48 An., 1036, Suc. of Allen.

Mrs. Allen is therefore entitled to *net proceeds*, all "taxes and other charges" being deducted from gross proceeds. To say that she is entitled to the *gross crop* as it stood at the time of the testator's death would be enlarging the express provisions of the will as interpreted by the supreme court.

1. The gross proceeds of the crop of 1894 as per statement "C," herewith filed as part hereof, amounted to.....	$56,072.58
The taxes and expenses paid subsequent to date of testator's death as per statement "C 1," herewith filed as part hereof, amount to.....	$27,238.06

	Expenses paid prior to testator's death as per statement "C 2," herewith		
28	filed as part hereof	22,800.30	
	Net proceeds crop of 1894	6,034.22	
		$56,072.58	
	Net proceeds crop of 1894		$6,034.22
	These net proceeds belong to Mrs. Allen, but she must reimburse to the estate the amount of deficit on crop of 1895, as per statement "D," herewith filed as part hereof		748.19
	Net balance due Mrs. Allen out of the crop account		$5,286.03

Out of this net balance of $5,286.03, Mrs. Allen must also restore to the cash assets of the estate a sum of $3,725.22 which she has drawn on her personal account. See Ledger C, p. 36, 37.

	II. As to the crop of 1895, it will be seen by detailed statement herewith filed as part hereof and marked "D" that the total gross proceeds of that crop amounted to		$30,974.05
	The total expenses to	$31,722.24	
	Deficit		748.19
		$31,722.24	$31,722.24
	Deficit on crop of 1895		$748.19

III. The amount of expenses on crop of 1894, paid prior to testator's death, as above set forth, is an unwilled asset and must be distributed among the legal heirs who have not been cut off by the will.

	The amount is		$22,800.30
29	1. One-third of this amount goes to the estate of Thos. H. Allen	$7,600.10	
	2. One-third to the two Turner heirs	7,600.10	
	3. One-third to the five Smith heirs	7,600.10	
		$22,800.30	

V.

Household Furniture.

Assets.

The household furniture was bequeat-ed to Mrs. Bettie Allen, and she is in possession of same.

VI.

The Gold Watch.

Assets.

Accountant proposes to turn over this gold watch to the father of R. H. Allen, Jr., who is still a minor.

VII.

Claim against Thos. H. Allen & Co.

Assets.

This claim has long since been taken possession of by the legatee thereof, Mrs. Thos. H. Allen, and her assigns.

Claim against U. S. Government.

Assets.

Accountant is informed that this old claim is being prosecuted by attorneys who were employed by the testator during his life-
30 time, under an agreement by which these attorneys are to receive a certain proportion of any amount recovered. Accountant hereby transfers said claim to the legatees thereof, viz: (1) to the family of R. H. Allen, Jr., one-fifth of said claim; (2) to the family of Thos. H. Allen, Jr., one-fifth thereof; (3) to the family of Harry Allen, one-fifth thereof; (4) to Mrs. Louise Latham, one-fifth thereof, and (5) to Ogden Smith, Fred W. Smith, Gaston Smith, T. A. Smith, and Mrs. Nellie Houchens, one-twenty-fifth thereof to each.

IX.

Cash in Hands of Baring Bros. and Bonds of the City of New Orleans.

Assets.

These two items of assets have long been taken possession of by Mrs. Bettie Allen, the special legatee thereof.

Recapitulation.

I. "Rienzi" plantation was delivered to the legatees, viz: (1) Mrs. Bettie Allen, one-half; (2) the family of Thos. H. Allen, Jr., one-tenth; (3) the family of Harry Allen, one-tenth; (4) the family of R. H. Allen, Jr., one-tenth; (5) Mrs. Louise Latham, one-tenth; and (6) Ogden Smith, Fred. W. Smith, Gaston Smith, Thos. Allen Smith, and Mrs. Nellie Houchens, the five together, one-tenth. The delivery was made to them on the 26th of January, 1896, on which date they sold the plantation to Messrs. J. B. Levert and Emile U. Morvant, as per act before H. N. Coulon, notary of the parish of Lafourche, and, as will appear by the accompanying final account, herewith filed, the proceeds of sale, in cash and notes, have been received by these legatees. See final account referred to, page 1 to 8.

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II.	The cash assets, exclusive of crop money and bounty, are fully accounted for in said final account, chap. II, page 8 to 12, showing a balance still due by the executors, page 12, of		$5,819.91
III.	Bounty money collected from the U. S. Government is	$11,569.35	
	Less expenses	$336.70	
	" com. ex'c'r	96.41	
		$433.11	433.11
	Balance due by executors	$11,136.24	11,136.24
	For detailed statement of bounty money account, see accompanying final account, page- 13, 14.		
IV.	Crops of 1894 and 1895 are fully accounted for in said final account, page 15 to 16.		
	Gross proceeds crop 1894	$56,072.58	
	Less expenses and taxes paid after death of testator	27,238.06	
		$28,834.52	
	Less expenses paid prior to death	22,800.30	
	Net proceeds crop of 1894	$6,034.22	
	Less deficit on crop 1895	748.19	
	Balance due on crop ac	$5,286.03	5,286.03
	Accounted for and still due by executors, expenses prior to death reimbursed out of gross proceeds of crop of 1894		22,800.30
			$45,042.48
V.	Liabilities still due by executors as follows:		
	1. John B. Taylor, final ac., p. 10		1.50
	2. T. A. Smith, " "		25.00

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3.	The reserve for costs, p. 10	250.00
4.	W. F. Collins, com. as exec'r, p. 13	96.41
	Grand total still due by executors	$45,415.39

Resources.

1. Latham, Alexander & Co.	$545.64	
2. Louisiana nat. bank	20,861.17	
3. Whitney nat. bank	20,078.56	
4. New Orleans Canal bank	11.90	
5. Mrs. Bettie Allen, bal. due by her on personal account	3,725.22	
6. Due by Mrs. Allen $\frac{1}{2}$, the Allen heirs $\frac{4}{10}$, and the Smith heirs $\frac{1}{10}$; advertising Rienzi in Comet, $30, & Picayune, $168.	193.00	
7. Profit & loss coming from fact that banks took no ac. of fractions	.....	.10
	$45,415.49	$45,415.49

Thibodaux, La., Aug. 26th, 1896.
(Signed) CLAY KNOBLOCH & SON,
Attorneys for Ogden Smith, Co-executor.

E. & O. E.
New Orleans, August 28th, 1896.
(Signed) OGDEN SMITH,
Test'y Executor.

Sworn to and subscribed before me this the 28th of August, 1896.
(Signed) E. ROUEN, *Not. Pub.*

Filed August 29th, 1896.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Notice to Newspapers of the Filing of the Final Account.

STATE OF LOUISIANA:

33 18th Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417, Probates.

Whereas Ogden Smith, of said parish, executor of the last will and testament of the aforesaid succession, has rendered a final account of his administration of the aforesaid estate:

Now, therefore, all persons are hereby warned and notified to file their oppositions to the said account, in writing, with the clerk of said court, at his office, in the town of Thibodaux, within ten days after the first publication hereof; otherwise the said account will be approved in accordance with law.

[L. S.] Witness my hand and the impress of the seal of my office, at Thibodaux, La., this 29th day of August, A. D. 1896.
(Signed) P. F. LEGENDRE,
D'y Clerk of said Court.

Filed Aug. 29th, 1896.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Opposition of Smith Heirs to Final Account of Mrs. Allen and W. F. Collins, Executors.

THE STATE OF LOUISIANA:

18th Dist. Court, Lafourche.

Succession of R. H. ALLEN. No. 1417, Probates.

To the honorable the judges of the 18th judicial district court of the State of Louisiana in and for the parish of Lafourche:

The petition and opposition of Mrs. Nellie Houchens, Ogden Smith, T. A. Smith, Gaston Smith, and Fred W. Smith, residents of the parish of Orleans, Louisiana, respectfully shows—

That your petitioners are the legal heirs, with others, of the late Richard H. Allen, and are entitled jointly to one-third part
34 of all the property, monies, rights, and assets of said estate which have not been disposed of by the last will and testament of said R. H. Allen, deceased.

That under a tableau of distribution already filed and homologated the legacies were all discharged, debts paid, and the greater part of the estate settled, but there remained and were reserved for future settlement by the executors of said estate certain unpilled claims and assets, such as the bounty and the costs and expenses of making and saving the crops of the years 1894 and 1895.

Now, your petitioners and opponents aver that on the 18th August, 1896, two of the executors of said estate, Mrs. Bettie Allen and William F. Collins, filed in this court their final account; that in the same they propose to pay over to Mrs. Allen, a mere legatee and not an heir of the late Richard H. Allen, certain assets of the estate which were never disposed of by the testament of said Allen, and which really belong to and should be paid to the legal heirs of the deceased, who are not excluded from sharing therein by the last will and testament.

Your petitioners and opponents aver that they oppose each and every item on the final account of said executors, Mrs. Allen and W. F. Collins, save and except the proposed disposition of the claim against the U. S. Government. Especially do they oppose the payment of the bounty money to Mrs. Allen and the payment of the crop proceeds to her, she being only entitled to the net proceeds after all expenses and debts & taxes for making same are paid.

Opponents aver that they are entitled jointly to one-third of the bounty money and one-third of the sum that must be deducted from the gross proceeds of the crops of 1894 and 1895 to replace the cost and expense of making said crops and the taxes due by the property.

Opponents further say that they oppose the proposed pay-
35 ment of any further commissions to W. F. Collins, executor, he having already been paid in full his said commissions, which are calculated on the amount of the inventory of said estate.

Wherefore, the premises considered, your opponents pray that the

final account of Mrs. Bettie Allen and W. F. Collins, executors in this estate, and the distribution as therein proposed of the assets and monies of the estate may not be homologated and approved by the court, and that this opposition be maintained and said executors be ordered to amend and remodel said account, so as to recognize petitioners as entitled jointly to one-third of the bounty money and one-third of the sum of money to reimburse the expenses of making the crop, and, in a word, to one-third of all the unwilled assets of the estate.

Opponents finally pray for all and general relief.

(Signed) L. F. SUTHON,
Att'y of Opponents.

Filed Aug. 26th, 1896. (Filed.)
P. F. LEGENDRE, *D'y Clerk.*

Appearance and Answer of Smith Heirs to Final Account of Ogden Smith, Executor.

Succession of R. H. ALLEN. No. 1417, Pro.

To the honorable the judge of the 18th judicial district court of the State of Louisiana in and for the parish of Lafourche:

The appearance and answer of Mrs. Nellie Houchens, Ogden Smith, T. A. Smith, Gaston Smith, and Fred W. Smith, residents of the parish of Orleans and legal heirs of the late R. H. Allen, respectfully shows—

That they have taken cognizance of and have carefully examined final account and tableau filed in this estate by Ogden Smith,
36 one of the executors thereof, and, finding the same correct and accurate in every particular, they have no objection to urge thereto.

Wherefore appearers pray that said final — of Ogden Smith, executor, after the legal delays and due proceedings had, may be approved and homologated, and for all and general relief.

(Signed) L. F. SUTHON,
Att. for Appearers.

Filed Aug. 29th, 1896.
(Signed) F. P. LEGENDRE, *D'y Clerk.*

Opposition of J. W. Turner and W. A. Turner to Final Account of Mrs. Allen and W. F. Collins, Executors.

18th Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417, Probate.

To the honorable the judge of the eighteenth judicial district court of Louisiana in and for the parish of Lafourche:

The joint petition and opposition of John B. Turner and W. A. Turner, citizens and residents of the State of Texas, respectfully represents:

That your petitioners and opponents are nephews and nearest of kin and joint heirs-at-law of the late Richard H. Allen for the one undivided third of the residue of his succession and estate after payment of debts and legacies, and as such entitled to said one-third part of all the property, money, rights, and assets of said estate not specially bequeathed and disposed of by the will of said late R. H. Allen.

That under a prior tableau of distribution, duly homologated by final decree of the district and supreme court, all debts and legacies were paid and discharged, leaving open for future settlement by the executors of said estate a large amount of assets, claims, and property unbequeathed and constituting the residue of this estate, such as bounty and the cost and expense of making and saving
37 the crops of the years 1894 and 1895 on the Rienzi plantation.

Now, petitioners and opponents aver that on August 18th, 1896, two of the executors of said estate, Mrs. Bettie Allen and W. F. Collins, filed in this honorable court their final account, wherein they propose to pay over to Mrs. Allen, a mere particular legatee of a part of the Rienzi plantation and of the crop of said plantation and of other particular claims and property, and not one of the heirs-at-law of the late R. H. Allen, certain assets and property of the succession not bequeathed under the will to her or to any one else and constituting the residuum of this estate, which under the law should go to and be paid to the heirs at-law of the deceased not excluded by the will, your petitioners and opponents being entitled jointly to one-third of said residuum.

Your petitioners and opponents aver that they oppose each and every item on said final account of said Mrs. Bettie Allen and W. F. Collins, executors, except the proposed disposition of the claim against the U. S. Government. Petitioners and opponents more particularly and especially oppose the payment to Mrs. Bettie Allen of the bounty money collected by the executors from the Government of the United States and the payment of the whole of the proceeds of the crops of 1894 and 1895 of the Rienzi plantation, inasmuch as the said widow, Bettie Allen, under the will and final decree of the supreme court is only entitled to the net proceeds of said two crops after all taxes, debts, and expenses for making and raising said crops are paid.

Petitioners and opponents aver that they are entitled as heirs-at-law of the deceased jointly to one-third of the bounty money collected by the executors from the Government of the United States and amounting to $11,569.35, making the sum of $3,856.45 to them jointly, or thereabout.

Petitioners and opponents aver that they are entitled, as
38 heirs-at-law of the deceased, jointly to one-third of whatever sum is to be deducted from the gross proceeds of the crops of 1894 and 1895 to replace the cost and expense of making the said crops and the taxes paid on the property, as may be shown and established by the evidence at the trial of this case.

Petitioners and opponents further oppose the proposed payment

of any commissions to W. F. Collins, executor, he having already been paid in full his said commissions, calculated on the amount of inventory of said estate.

Wherefore petitioners and opponents, the premises considered, pray that the final account of Mrs. Bettie Allen and W. F. Collins, executors of the estate, and the distribution proposed by them be rejected, disallowed, and dismissed; that these oppositions be maintained and the said final account be amended and modified accordingly; that these oppositions be made the basis of the judgment of court; that the plea of *res adjudicata* set up by said executors be rejected as unfounded and not well taken; that petitioners and opponents be revognized and decreed to be entitled jointly to one-third of the bounty money collected from the Government of the United States and be paid said sum, amounting in the aggregate to $11,569.35, making the sum of $3,856.45 to them jointly, or thereabout, and also to one-third of whatever sum of money the evidence will show them entitled to, in reimbursement of the cost and expense for making the crops of 1894 and 1895 or the crop of 1894 only, and finally to one-third jointly of the whole residuum of the estate after payment of debts and discharge of legacies.

And petitioners and opponents pray for all general and equitable relief needful in the premises and for costs.

(Signed) HENRY CHIAPELLA,
Attorney for Turner Heirs, Petitioners and Opponents.

39 Filed Aug. 29th, 1896.
(Signed) P. J. AUCOIN, *D'y Clerk.*

Appearance and Answer of Turner Heirs to Final Account of Ogden Smith, Co-executor.

STATE OF LOUISIANA:

18th Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417.

To the honorable the judge of the 18th judicial district court of Louisiana in and for the parish of Lafourche:

The appearance and answer of John B. Turner and W. A. Turner, residing and domiciliated in the State of Texas, to the final account of Ogden Smith, co-executor of the succession of the late R. H. Allen, and to the petition accompanying the same, respectfully represents:

That they are nephews and joint heirs-at-law of the deceased for one-third of the estate and have taken cognizance of and have carefully examined the said final account and tableau filed by Ogden Smith, one of the executors thereof; that they find the same correct and accurate in all particulars, and that they have no objections to a decree approving and homologating same and ordering the distribution of the funds to be made accordingly.

Wherefore appearers pray that said final account and tableau of

Ogden Smith, co-executor, after all legal delays and due proceedings had, be approved and homologated and be made the basis of the judgment of court, and that the funds be ordered to be distributed accordingly, and for all costs of court, and for all general and equitable relief needful in the premises.

(Signed) HENRY CHIAPELLA,
Attorney for Turner Heirs.

Filed Aug. 29th, 1896.
(Signed) P. J. AUCOIN, *D'y Clerk.*

40 *Opposition to Account of Administration by Jennie Boyle et als.*

18th Jud. Dist. Court, Parish of Lafourche, State of Louisiana.

Succession of RICHARD H. ALLEN. No. 1417.

The opposition of Mrs. Jennie Boyle and of her husband, John Boyle; of Mrs. Bettie De Bery and her husband, A. W. De Bery, and of Mrs. Ellen B. Baker, divorced wife of —— Baker, to final account of administration filed in this succession by two of the executors, Mrs. Bettie Allen and W. F. Collins, respectfully represents:

That your opponents, who are heirs of the deceased and as such have an interest in the premises, oppose said account of administration in the following particular only and not otherwise, viz:

They oppose the payment of the sum of $11,569.35, received by said executors from the United States as bounty to Mrs. Bettie Allen:

1st. Because same is not due to Mrs. Bettie Allen as legatee under the will of the said Richard H. Allen.

2nd. Because said amount is a gratuitous gift and donation from the United States Government, the grantor, which forms no part of the crop of sugar cane grown on the Rienzi plantation during 1894, nor of the proceeds of said crop, nor does it form part of the said plantation or of the proceeds of said plantation.

3rd. Because the same did not exist at the death of the testator, Richard H. Allen, nor at the time of the completion of his will was no part of his estate, could not have been bequeathed by him, and was not bequeathed by his will to the said Mrs. Bettie Allen, who is not an heir or her said husband and has no interest therein.

Your opponents further aver that said amount of $11,569.35 forms no part of the residuum of said succession, such as
41 the same existed at the death of the testator, Richard H. Allen, and is not part thereof, and is not controlled by the provisions of his will, and belongs directly to the heirs of said Richard H. Allen.

Your opponents are entitled as heirs of said Richard H. Allen *are entitled* to two-fifths $\frac{2}{5}$ of said sum, one-fifth to your opponent, Mrs. Jennie Boyle, one-tenth to each of your other two opponents.

Wherefore they pray that this opposition to said account of administration be maintained; that they be decreed to be entitled to two-fifths of the above sum, and that the account of administration

be amended with this opposition, and that as thus amended the same be approved and homologated.

And for general relief, &c.

(Signed) E. D. LE BRETON,
L. DE POORTER,
Att'ys for Opponents.

Filed August 31st, 1896.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

Prayer of Suc. of Thos. H. Allen for Homologation of Final Account of Ogden Smith, Executor.

18th Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417.

To the honorable the judge of the 18th judicial district court for the parish of Lafourche:

The appearance and answers of J. Louis Aucoin, administrator of the succession of Thomas H. Allen, deceased, under appointment of this court, respectfully represents that the said Thomas H. Allen was one of the heirs-at-law of the late R. H. Allen.

That petitioner has taken cognizance of and has carefully examined the final account and tableau filed herein by Ogden
42 Smith, one of the executors, and finds the same correct and accurate in all respects.

Wherefore petitioner prays that said account, after legal delays and proceedings, may be approved and homologated, and for all general relief.

(Signed) FENNER, HENDERSON & FENNER,
THOMAS A. BADEAUX,
L. F. SUTHON, *Attorneys.*

Filed Sept. 5th, 1896.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

Opposition to Suc. of Thos. H. Allen to Final Account of Mrs. Bettie Allen and W. F. Collins, Co-executors.

18th Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417.

To the honorable the judge of the 18th judicial district court for the parish of Lafourche:

The petition of J. Louis Aucoin, administrator of the succession of Thomas H. Allen under appointment of this honorable court, respectfully represents:

That Thomas H. Allen, deceased, was one of the legal heirs of the late R. H. Allen and as such entitled to one-third of the property, monied rights, and assets of said R. H. Allen which have not been disposed of by his last will and testament.

That under a tableau of distribution already filed and homologated the legacies were all discharged, debts paid, and the greater part of the estate settled, but there remained and were reserved for future settlement by the executors of said estate certain unwilled claims and assetts, such as the bounty and the costs and expenses of making and saving the crops of the years 1894 and 1895.

Now, your petitioner and opponent avers that on August
43 18th, 1896, two of the executors of said estate, Mrs. Bettie Allen and W. F. Collins, filed in this court their final account; that in the same they propose to pay over to Mrs. Allen, a mere legatee and not an heir of the late R. H. Allen, certain assets of the estate which were never disposed of by the testament of said Allen and which really belong to and should be paid to the legal heirs of the deceased who are not excluded from sharing therein by the last will and testament.

Your petitioner and opponent avers that he opposes each and every item on the final account of said executors, Mrs. Allen and W. F. Collins, save and except the proposed disposition of the claim against the U. S. Government. Especially does he oppose the payment of the bounty money to Mrs. Allen and the payment of the crop proceeds after all expenses and debts and taxes for making same are paid.

Opponent avers that he is entitled jointly to one-third of the bounty money and one-third of the sum that must be deducted from the gross proceeds of the crops of 1894 and 1895 to replace the cost and expense of making said crops and the taxes due by the property.

Opponent further says that he opposes the proposed payment of any further commissions to W. F. Collins, he having already been paid in full his said commissions, which were calculated on the amount of the inventory of said estate.

Wherefore, the premises considered, your opponent prays that the final account of Mrs. Bettie Allen and W. F. Collins, executors of this estate, and the distribution as therein proposed of the assets and moneys of the estate may not be approved and homologated by the court, and that this opposition be maintained and said executors be ordered to amend and remodel said account, so as to recognize petitioner as entitled jointly to one-third of the bounty money and one-third of the sum of money to reimburse the expenses
44 of making the crop, and, in a word, to one-third of all the unwilled assets of the estate. Opponent finally prays for all and gen. relief.

(Signed) FENNER, HENDERSON & FENNER,
" THOMAS A. BADEAUX,
" L. F. SUTHON, *Attorneys for Opponent.*

Filed Sept 5th, 1896.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

Opposition of Mrs. Jennie Boyle et als. to Account of Ogden Smith

18th Judicial District Court, Parish of Lafourche, La.

Succession of R. H. ALLEN. No. 1417.

Now come into court Mrs. Ellen B. Baker, divorced wife of Charles Baker; Mrs. Bettie De Berry, wife of A. W. De Berry, and her said husband to assist and authorize her, and Mrs. Jennie Boyle, wife of John Boyle, and her said husband to assist and authorize her.

And herein reiterating and adopting the facts and allegations contained in their opposition heretofore filed by them to the account filed by the two executors Mrs. Bettie Allen and W. F. Collins:

Now opposes the final account filed by Ogden Smith, their co-executor, in so far only as the same proposes to distribute the money received by the executors of said estate from the Government as bounty money and amounting to the sum of $11,569.35.

Your opponents claims that as heirs of R. H. Allen, deceased, they, for the reasons set forth in their opposition filed to the account of the two executors Mrs. Bettie Allen and W. F. Collins, which is made part of this opposition, are entitled to receive and be paid from said amount two-fifths thereof jointly and as set forth in their above-stated opposition.

And they now oppose the manner the said executor, Ogden
45 Smith, proposes to pay same in said account, and especially opposes the payments thereof he proposes to make to the following-named parties, to wit:

1st. To estate of Thos. H. Allen, Sr.....	$3,712.08
2nd and 3rd. To J. B. Turner and Wm. A. Turner, each $1,856.04...	3,712.08
4th. To the five children of Mrs. Cynthia Smith as named in said acc't, each $742.41⅗.....	3,712.08

That said amounts are in excess of what the said named parties are entitled to and should receive from said fund, and should be reduced to their proper proportion and share in said fund.

Wherefore your opponents pray that this opposition be maintained, and that they be recognized to share in said funds to the extent of two-fifths jointly, and that the account be amended accordingly, and for general relief.

(Signed) E. D. LE BRETON,
" L. DE POORTER, *Att'ys.*

Filed Sept. 8th, 1896.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Waiver of Citation by Mrs. Sallie Cragin.

STATE OF LOUISIANA:

Eighteenth Judicial District C'rt, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417.

I hereby accept service of the final accounts filed in this matter by the executor W. F. Collins, and the executrix, Mrs. Bettie Allen, and also by Ogden Smith, executor, and I waive citation and notice of filing.

(Signed) SALLIE G. CRAGIN,
Personally and as Natural Tutrix of My Minor Children.

Filed Sept. 30th, 1896.
(Signed) P. J. AUCOIN, *D'y Clerk.*

Testimony on Trial of Oppositions to Final Accounts.

STATE OF LOUISIANA, }
Parish of Lafourche. }

46 18th Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417, Probates.

Testimony to the oppositions of the final accounts.

It is admitted by all parties that due publication of the two final accounts have been made and published.

It is agreed that the two accounts shall be considered as petitions and oppositions one to the other.

It is admitted that the bounty of 1894 was applied for by R. H. Allen before his death, and that he obtained a license under the law of 1890.

It is admitted that the McKinley or bounty bill was repealed on or about the 28th of August, 1894, after the application for bounty had been made. The act authorizing the payment of the $\frac{8}{10}$ of one per cent. was passed on the 2nd of March, 1895, on the crop of 1894.

It is admitted that R. H. Allen died on the 19th of Sept., 1894, and thereafter the crop was administered by his executors, who manufactured the same into sugar.

It is admitted that the gross proceeds of the crop of 1894, outside of the bounty, was the sum of $56,072.58. (See statement "C" for the convenience of the judge.)

It is admitted that the amount of the bounty paid by the United States on the crop of 1894 was the sum of $11,569.35.

It is admitted that the gross proceeds of the crop of 1895 is $30,974.05.

It is admitted that the cost of making, harvesting, and selling the same was $31,722.24, and that there was the deficit on that crop of $748.19—on the crop of 1895.

It is admitted that the plantation has been turned over to the legatees under the will on the 29th January, 1896.

It is admitted that the Government claim against the Government of the United States has been turned over to the legatees.

It is admitted that the household furniture, cattle, &c,
47 *was* turned over to Mrs. Allen under the will.

It is admitted that the claim against Thos. H. Allen & Co., bequeathed to Mrs. Thos. H. Allen, has been received by her or assignee.

It is admitted that the sum of $5,833.33⅓ has been turned over to the estate of Thos. H. Allen.

It is admitted that the sum of $1,166.66⅔ has been turned over to each of the heirs or children of Mrs. Cynthia Smith, to wit, Gaston Smith, Mrs. Nellie Houchens, Ogden Smith, Thos. A. Smith, and Fred W. Smith, but the latter received his note of $500.00 as part payment thereof.

It is admitted that the clerk's costs of $32.40 have been paid.

It is admitted that Clay Knobloch & Son and Beattie & Beattie have been paid.

It is admitted that the commission of W. F. Collins has been paid, amounting to the sum of $1,094.27.

Testimony for all Executors.

Offered in Evidence.

The receipt of Mrs. Sallie Cragin for the sum of five hundred dollars.

The receipt of the clerk of the supreme court for sixty-one dollars and eighty cents.

The receipt of Lizzie Harrison for one hundred and fifty dollars.

The receipt of Walter Collins for two hundred dollars.

The receipt of the executor for his commission.

The receipt of Chas. J. Barker, clerk of court, for $65.60.

The receipt of Henry Chiapella, for W. A. & J. B. Turner, for $2,916.66⅔.

The receipt of Ogden Smith, Thos. A. Smith, Gaston Smith, F.W. Smith, and Nellie Houchens for the notes of the credit instalments of the Rienzi plantation delivered to them.

48 *Evidence on Behalf of Mrs. Bettie Allen and W. F. Collins, Executors.*

Offered in Evidence.

The provisional account of Ogden Smith, executor, filed February 5th, 1895, together with statement "A" annexed thereto and the petition accompanying the same.

The petition and provisional account of Bettie Allen and W. F. Collins, filed January 24th, 1895.

It is admitted that the gold watch was turned over to the father of the legatee.

It is admitted that the sum of $321.70 *were* made as costs necessary to collect the bounty, and it is claimed by Ogden Smith that $15.00 paid October 8th, 1894, to L. J. Souer, general manager of the Planters' Bounty Bureau, heretofore charged on the account filed in 1895 and charged to general expenses, should be charged to this cost of collecting the bounty, which would make it $336.70 instead of $321.70.

Offered in evidence—

The will and the decision of the district court heretofore rendered: the decision of the supreme court and on the rehearing, on the first hearing and on the rehearing.

The testimony of Ogden Smith, Thos. A. Smith, heretofore taken on the trial of the homologation of the first account.

It is agreed that the whole record is offered in evidence by all parties subject to all objections — are therein made.

It is admitted that the assessment-rolls of 1894 for the parish of Lafourche was filed in the clerk's office on the 29th of August, 1894.

Testimony on the part of Mrs. Bettie Allen and W. F. Collins, executors, closed.

Testimony on Behalf of Ogden Smith, Executor.

Offered in Evidence.

49 — Certified copy of act of 29th of January, 1896, by Mrs. Bettie Allen and others to J. B. Levert and E. U. Morvant of the Rienzi plantation, as per act before H. N. Coulon, notary.

The decision of the supreme court in the matter of Allen Heirs *v.* J. B. Levert and others, numbered 12122 on the docket of the supreme court of this State.

The family meetings, procès verbal thereof, and judgment homologating the same, authorizing the investment of the minor's fund, 1st, in *Ex parte* R. H. Allen, Jr., No. 1475 of the docket of this court; 2nd, *Ex parte* Thomas H. Allen, Jr., No. 1476; 3rd, *Ex parte* Harry Allen, No. 48092 on the docket of the civil district court, division "E," of the parish of Orleans.

Certified copy of act before George C. Preot, notary of New Orleans, passed July 31st, 1896.

The following vouchers:

Four receipts of Fenner, Henderson & Fenner, attorneys of the so-called Allen heirs, for the cash and coupon notes, marked 13.

Receipt of the so-called Smith heirs for the cash due them, marked 14.

Receipt of the so-called Smith heirs for $1,166.66, paid to each on account of their distributive shares as legal heirs, marked 15.

Receipt of Henry Chiapella, attorney of J. B. and W. A. Turner, for the sum of $2,916.66, hitherto paid to each of his client- on account of their distributive shares as legal heirs, marked 16.

Receipt of Mat Dickerson for $150.00, amount of legacy coming to him.

CLAY KNOBLOCH, sworn, says:

The ordinary mark of Mat Dickerson to this receipt is
50 genuine; was made in my presence. The amount was paid to him June 12th, 1896, by check of the executors on the Whitney national bank, marked document 17.

Offered in evidence—

The receipt of Mrs. Sallie Cragin for $563.00, amount due her minor children as tutrix of her minors George and Allen, legatees under the will, marked 18.

Receipt of J. L. Aucoin, administrator of the estate of Thomas H. Allen, for $5,833.33⅓, on account of the distributive share of said Thomas H. Allen as a legal heir, marked 19.

The receipt of Beattie & Beattie, attorneys, for $4,000.00 as attorneys' fees, marked 20.

Receipt of Clay Knobloch & Son for $2,000, as attorneys' fees, marked 21.

The receipt of Beattie & Beattie for $127.40, being to reimburse costs paid clerk of the supreme court, $61.80, and costs of clerk of court of Lafourche for the transcript of appeal, $65.60, marked 22.

The receipt of Clay Knobloch & Son for $46.59, to reimburse them costs of briefs paid by them for the original and supreme court briefs of Ogden Smith, co-executor, marked 23.

Receipt of Beattie & Beattie for $45.00, costs of briefs on behalf of Mrs. Allen and William F. Collins, co-executors, marked 24.

Receipt of Clay Knobloch & Son, attorneys, for the succession of J. W. Knobloch, late clerk of court of Lafourche, for $56.20, clerk of court fees, marked 25.

Receipt of James Beary, sheriff, $12.70, sheriff's fees, marked 26.

Receipt of John B. Taylor, $25.00 print bill due Lafourche Comet, marked 27.

Bills of M. F. Dunn & Bro., duly receipted, receipt made in the name of Clay Knobloch & Son, showing the costs for printing briefs on behalf of Ogden Smith, marked 28.

51 The receipt of C. J. Barker, clerk of court, for $84.60, marked 29.

CLAY KNOBLOCH recalled:

Messrs. Le Breton & De Poorter, as attorneys for Mrs. De Berry, Mrs. Baker, and Mrs. Jennie Boyle, were paid $1,500.00 on June 8th, 1896, by check of the executors on the Louisiana national bank, check for $1,500.00. I can't recall whether their receipt was turned over to me. If it is, I have mislaid it. I can't lay my hands on it now. Payment was made, if I remember well, in the presence of Henry Chiapella.

Offered in evidence—

The two day books, the two ledgers and pay-roll book, and the four check books kept by the executors and kept by Thomas A. Smith for the deceased and for his estate afterwards.

CLAY KNOBLOCH recalled:

I made out the final account of Ogden Smith, filed August 29th, 1896, basing myself first on the account filed by Ogden Smith, executor, on February 5th, 1895, and on the books kept
52 by Thomas A. Smith, and from information and assistance received from Thomas A. Smith, so far as the cash assets are concerned in the last final account. I believe every dollar is charged by the executors. When I came to the liabilities I took the liabilities on the first account which had been fully proved to the amount of $16,661.17 as being established, with the exception of the item No. 52, of $500.00, which the first account allowed to John S. Billiu, attorney of absent heirs, which the court rejected. In the $16,661.17 of the liabilities as appeared on the first final account are the various legacies to Mrs. De Berry, Mrs. Baker, and Mrs. Boyle and others. After deducting the $500.00 attorney's fees of absent heirs that had been disallowed, I next struck a balance of $19,594.95 to be accounted for by the executors; to this balance I added Fred. W. Smith of $500.00, then I added in the second place the amount of errors which appeared in the first final account, one of $9.61 on the bill of the clerk of court, the other in the pay-roll, $56.50. Next I restored the unwilled cash various amounts which appeared in the first final account, debts which had been paid out of the unwilled cash by the executors after the death of the testator, and which from the information I could derive I believe was properly chargeable to the crop account of 1894. These items are detailed, and, including the State and parish taxes for 1894, which were paid after the death of testator, amounted to $4,407.79, as appears at page 9 of the last account of Ogden Smith. I also added the sum of $15.00, paid L. J. Souer bounty account, which appears as item 4 of the first final account. This item I charged up to bounty account in the last final account, thus swelling up the total balance unwilled cash to $24,583.87. Next I deducted errors that were in favor of the executors in the sheriff's bill and in the bill of the clerk of court and in the item No. 36, Ogden Smith, instead of $123.33 he was put down for in the first final account, and as the evidence taken on the first trial showed, the amount
53 should have been $171.65. Then followed the various debts and *legatees* paid by the executors, a reserve for the costs of $250.00, out of which the accountant, Ogden Smith, claims he should be paid $75.00 for travelling expenses; than I struck a net balance and made the distribution. So far as the bounty money is concerned and the expenses thereof, there is no dispute as to the amount received by the executors; the only discrepancy is in the expense; the ledger shows $321.70. I increased it by $15.00 paid L. J. Souer, October 8th, 1894, as appears by item 4 of the first final account, and which Mr. Smith, the book-keeper, failed to charge in his ledger to the bounty expense account. As to the statement "A" filed with the first final account of Ogden Smith, I took it as a basis of expenses incurred by the executors on the crop of 1894 up to the date of the filing of this statement on February 5th, 1895; and the statement "C 1" filed with the last final account contains

every single item of this statement "A," and it is supplemented first by the September pay-roll of 1894, which was paid October 5th, after the death, and with various other items of debts incurred prior to the death of testator, but paid subsequent to his death, and further supplemented by the expenses incurred by the executors subsequent to February 5th, 1895. These matters I have no personal knowledge —. I derived my information from the books or from Mr. Allen Smith, the book-keeper, or from check books and stubs of check books. As to statement "C 2," expenses paid prior to the death of testator on the crop of 1894, I derived the information from the books, particularly from Ledger "B," where I found that instead of keeping one single account, there were three accounts—one labor, the other wear and tear, and the other cooperage—and I singled out of those three accounts kept at different pages of the ledger such items as ap-eared to be
51 chargeable to crop and not to permanent improvement, and I endeavored to get the items as near as I could according to months and date. The total I found making out the account in that way was $22,800.30, having been paid prior to the death of testator. The cooperage account, I believe, I left out altogether, because it seems to me that that account was properly chargeable to the crop of 1893.

Cross-examination by BEATTIE & BEATTIE:

Q. Then, Governor, you know nothing of these items of your own knowledge?

A. I don't. The object of my testimony is simply to show the method I got in framing the last final account.

(The court limited this testimony to go in to show how Governor Knobloch went to make the account and not facts. This bill refers to all evidence and testimony on the same subject-matter.)

THOMAS A. SMITH, sworn, says:

Q. How old are you and where do you reside?

A. 33 years old; living in New Orleans now.

Q. Formerly lived where?

A. In La Fourche parish, Rienzi plantation.

Q. How long did you live on the Rienzi plantation?

A. I was living there 13 years.

Q. If you were employed there at all in any capacity, from what date and up to what time?

A. I was employed in 1883 by Mr. Allen, up to his death, and then by the executors of R. H. Allen, up to the last June, as sugar-maker and book-keeper.

Q. Look at these books and state in whose handwriting they were kept, with the exception of the last few items with the accounts kept with the banks, which is in the handwriting of Clay Knobloch, who posted the bank account up to date.

A. These books were kept by me in my handwriting.

Q. Look at this statement "A," which is filed February 5th, 1895 state in whose handwriting it is and by whom prepared and at whose request.

A. This statement was made out by me. It is through request of Clay Knobloch; shows the expenses incurred by the
55 executors of R. H. Allen after his death up to the date it was made out.

Q. Please refer to the books and state whether there are any expenses incurred by the executors on the crop of 1894 subsequent to the time when you furnished statement "A."

A. I know there were other expenses, such as produce tax.

Q. I direct your attention to statement "C I," filed August 29th, 1896, and state whether those items appeared on this statement.

A. Here is September pay-roll on this statement here—it is not on statement "A"—amounting to $1,327.05.

Q. When was that paid?

A. That was paid the first Saturday in October, 1894; paid after the death of Mr. Allen.

Q. What is the next item?

A. The next item is Stauffer, Eshleman & Co., $296.11. This is not on statement "A."

Q. Just state what items are on "C I" that are not on statement "A."

A. Oct. 8th, $44.10, is not on statement A; Standard Oil Co., $109.07; T. A. Smith, $500.41; Louis Julliat, $166.00; Garcia Stationery Co., $8.25; Ogden Smith, $171.65; Charles Flaxteiner, $456.67; W. F. Collins, $11.80; L. Keefe, $469.72; Stauffer, Eshleman & Co., $2.75; State and parish taxes for the year 1894, $1,348.31; E. Perrilliat, cooperage, $215.00; R. R. McBride, $20.95; Charles Flaxteiner, $59.25; 1 dozen moss collars, $7.50; John Trotter, $4.70; Ogden Smith, $7.50; James Beary, produce tax, $22.00; Mrs. McCormick, cooperage, $199.40; March pay-roll, $81.85; Barker & Lepine, $122.05; Frank McCulla, $31.25; Home Insurance Co., $385.47; April pay-roll, $21.90; Mrs. McCormick, $92.00; F. W. Webster, $349.53; Boudreaux & Lasseigne, cane bought, $436.99; August pay-roll, $8.70; September pay-roll, $22.00; James Beary, sheriff, $518.90; C. Perrilliat, cooperage, $68.40; October pay-roll, $86.75; James Beary, for the produce tax, $3.95.

Q. The next item that does not appear on statement "A," in October 8th, 1894, cooperage, $44.10. Please refer to your books and state all that you know about this item.

56 A. It is a bill of $44.10, for cooperage. It was incurred by Mr. Allen before his death and paid by his executors after his death.

Q. What was that cooperage for?

A. For the crop of 1894; making sugar barrels.

Q. The next item is October 10th; Stauffer, Eshleman & Co., $296.11. Look over your book and state what this is for.

A. That was for an account due Stauffer, Eshleman & Co. by Mr. Allen for various bill- for iron, etc., incurred for the crop of 1894 by

Mr. Allen before his death, and it was paid by the executors after his death.

Q. I see Standard Oil Co., $109.07.

A. That was oils delivered to Mr. Allen by the Standard Oil Co. on or about September 1st, that was to take off the crop.

Q. When was that paid?

A. After his death by the executors.

Q. What date?

A. October 10th, 1894.

Q. The next item is T. A. Smith, $500.41, October 10th, 1894. State all you know about this item.

A. That was for salary due to me by Mr. Allen before his death and paid by the executors after his death.

Q. Then, on the same date, Louis Julliat, $166.00. State all you know about this item.

A. That was an amount due Louis Julliat, who was the engineer employed by Mr. Allen before his death, for the repair of the machineries in the sugar-house to save the crop.

Q. When was it paid to him?

A. December 24th, 1894; paid by the executors.

Q. Garcia Stationery Co., $8.25. What was that for?

A. That was for cane-weighers' book.

Q. When was it paid?

A. October 24th, 1894.

Q. I. L. Lyons & Co., $9.65, October 10th. What was that for?

A. Chemicals for the sugar-house.

Q. For what crop?

A. 1894.

Q. Paid when?

A. October 24th.

Q. W. F. Collins, $11.80, October 22nd. What is that for?

A. W. F. Collins' bill up to September 13th, due him by Mr. Allen for supplies for the plantation for the crop of 1894, paid by the executors after Mr. Allen's death.

Q. Next one is L. Keefe, foundry bill, $469.72. What is that for?

A. That was for sugar-house supplies bought by Mr. Allen
57 before his death for *for* machinery for the sugar-house, and paid after his death by the executors for the crop of 1894. This bill was paid October 22nd, 1894.

Q. The next one, Stauffer, Eshleman & Co., for $275.00, December 29th. What is that for?

A. That was simply boxes for the sugar.

Q. For what crop?

A. The crop of 1894.

Q. Paid when?

A. January 2nd, 1895.

Q. The next is State and parish taxes of 1894, $1,348.31. When was that paid?

A. January 2nd, 1895.

Q. I see an item here, January 25th, 1895, C. Perilliat, cooperage, 215.00. What is that for?

A. That was for 200 molasses barrels for the crop of 1894.

Q. When was it paid?

A. January 29th, 1895.

Q. You have already testified that all items appearing on the statement "C 1," beginning of date February 12th, 1895, and subsequent to that date, didn't appear on statement "A." Please look at each one of these items, beginning February 12th, 1895, R. R. McBride, $20.95. State what were those various debts contracted for, by whom, and for what crop?

A. McBride, $20.95, was for sugar-house supplies, coal shovels, etc., for the crop of 1894; Charles Flaxteiner, 79 watches he made as engineer in the sugar-house on the crop of 1894, at seventy-five cents a watch; one dozen moss collars, $7.50, bought during the grinding crop of 1894; March 8th, J. W. Trotter, $4.70, for sugar-house supplies on the crop of 1894; Ogden Smith, expenses to the city, $7.50; that was for some plantation business; James Beary, sheriff, for produce tax, $22.00; that was portion of the previous tax on the crop of 1894; Mrs. J. McCormick, cooperage, $199.40—molasses barrels, crop of 1894; March pay-roll, $81.85, was for handling the sugar for the crop of 1894; Barker & Lepine, for coal, $122.09—coal bought from Barker & Lepine to boil third sugar; Francis McCulla, cooperage, $21.25—molasses barrels for crop of 1894; Home Insurance Co., $385.47, insurance on sugar for the crop of 1894; pay-roll for April, $21.90; it is for handling sugar of the crop of 1894; Mrs. J. McCormick, cooperage, $92.00, for molasses barrels for the crop of 1894; F. W. Webster, broker, $349.58,
58 brokerage commission for selling crop of 1894; Boudreaux & Lasseigne, $436.99; that was for cane bought from them for the crop of 1894; August pay-roll, $8.70; that was for handling sugar crop of 1894; September pay-roll, $22.00; that was for handling sugar crop of 1894; James Beary, sheriff, produce tax, $518.90, portion of the produce tax from the crop of 1894. *Q.* C. Perrilliat, cooperage, $68.40; that was for sugar-barrel material for the crop of 1894; October pay-roll, $86.75, expense for handling sugar crop of 1894; James Beary, sheriff, produce tax, $3.95, portion of the produce tax for the crop of 1894.

Offered in evidence—

All the vouchers that can be found in support of the various items on statement "C 1."

Q. Please look at statement "C 2," expenses prior to the death of testator, refer to your ledger and your pay-roll books and all the books you have here, and state all you know of these items of your personal knowledge and what is that for?

A. I recognize these items as expenses incurred in making the crop of 1884, prior to Mr. Allen's death.

Q. Were they paid prior to Mr. Allen's death?

A. All the expenses on this statement was paid prior to the death of the testator.

Q. Look over it carefully and compare with your books and state whether it is an accurate statement from your books.

A. I find that all these items are correcy, except the one August 8th, freight and express, $1.45, should be $1.40.

Q. What wer- these various debts incurred for?

A. In making the crop of 1894, feed for the mule, fertilizer, etc.; the item of coal is for taking off the crop of 1894; the amount is $4,378.08, for the purpose of taking off the crop of 1894, for manufacturing the cane into sugar, and also for the draining-machine purposes; that coal was used to take off the crop of 1894.

Offered in evidence—

The statement- "C," "C 1," "C 2," and statement "D."

59 Q. Look at statement "D," and state whether it is a correct copy of your books of expenses on the proceeds of the crop of 1895. I desire to call your attention to Ledger "C," page 12, where you foot up the expense of the crop of 1895. I desire to call your attention to item of June 17th, 1895, $168 00.

A. That was for advertising Rienzi plantation.

Q. Is this to be deducted from your total of $31,368.64?

A. Yes, sir.

Q. I call your attention to statement "D," to item April 20th, 1896, James Beary, sheriff, produce tax, $221.60.

A. That was the produce tax on the crop of 1895. That is to be added to the expenses, as appears in the ledger, to the crop of 1895.

Q. That would put the total expense to how much?

A. $31,722.24.

Q. With the exception, then, of this deduction, $168.00, adding the $221.60 produce tax, does this statement "D" with all other respects correspond with your ledger?

A. It does correspond with the ledger.

Q. Look at the proceeds for the crop and state whether those items correspond with the ledger.

A. Yes; I helped to check them off, and it corresponds with the ledger.

Offered in evidence vouchers of the crop of 1895, the vouchers of sugar bounty bureau.

Cross-examination by BEATTIE & BEATTIE:

Q. You say that this amount of $44.10 which is now charged as part of the expenses of that crop is due for cooperage, I believe.

A. Yes, sir.

60 Q. Will you explain these two charges on the first account filed in this estate under the No. 25 in both accounts? Tell me whether that is the same charged or not.

A. I recognize that to be the same item, $44.10. It is charged under the item No. 25 of both the first accounts filed by the executors of this estate.

Q. Look at No. 28, Stauffer, Eshleman & Co., $296.11.

A. That is the same item that I have testified to today.

Q. Look at No. 30, $109.07, Standard Oil Co.

A. It is the same item that I have testified to today.

Q. Now the item due T. A. Smith, No. 34, $500.41?

A. It is the same item that I have testified to today.

Q. The next one is No. 35, Louis Juilliat, $166.00.

A. It is the same item that I have testified to today.

Q. The next item that you testified is $171.65. State whether that is part of item No. 36 on both accounts

A. Yes, sir; a part of item No. 36 on the two accounts first filed in this estate, $450.67. A. It is a part of the same item that I have testified to today as being a part of the expenses of the crop of 1894 and paid by the executors.

Q. Look at the item No. 16 on both of these accounts. $469.72, is that the same amount that you testified today was due upon the crop?

A. Yes, sir; the same amount.

Q. Look at the item of 1,348.31, under No. 49. Is that the same amount that you testified to today, State and parish taxes?

Q. In one account it is put down as item 49 and in one account as No. 50; it is the same amount — taxes that I have testified to today.

Q. You were a witness when these two accounts were tried
61 before, were you not?

A. Yes, sir.

Q. Your brother, Ogden Smith, the executor, was present that day, was he not?

A. Yes, sir; I think he was.

Q. You state that there is an amount paid Perrilliat for cooperage for $215.00?

A. It is not on statement "A."

Q. Tell us when those barrels were bought.

A. The vouchers will show that; bought January 24th, 1895; it was to be used for molasses for the crop of 1894.

Q. Look at the item that you charge R. R. McBride, February 12th, 1895. What is that for and when were they bought?

A. It was all bought after the death of testator, except two items, one of $1.25 and one for twenty-five cents that was bought before Mr. Allen's death. The balance was all bought after his death.

Q. The next is Charles Flaxteiner, $59.25?

A. That was for watches paid during the grinding of 1894.

Q. The next charge you make is one dozen moss collars, $7.50; say when they were bought.

A. It is paid February 8th. I can't state exactly when it was bought; it was paid February 8th, 1895; it was paid for by Ogden Smith February 8th, 1895.

Q. The next one is $4.70, John W. Trotter, March 8th, 1895.

A. Bought in October and November, 1894; paid March 8th, 1895.

Q. There is a charge there, expense to the city of Ogden Smith, March 5th, $7.50.

A. Expenses to New Orleans in the month of October, 1894, $7.50.

Q. The next, which is $22.00.

62 A. It is for the produce tax of 1894.

Q. There is a charge that you testified — of $199.40 to Mrs. James McCormick; please state when and what it was for.

A. Bought January 9th and January 14th, 1895, and March 19th, 1895, bought by the executors for molasses barrels for the crop of 1894.

Q. The next is March pay-roll, 1895, $81.85.

A. That was for the handling sugar of the crop of 1894.

Q. Barker & Lepine, $122.09. What was it for?

A. For coal to boil third sugar, 1894.

Q. The next charges $31.25, April 10th, Francis McCulla.

A. Bought April 10th, 1895, 25 molasses barrels, cooperage for the crop of 1894.

Q. The next item is the item of $385.47, paid to the Home Insurance Company. What is that for?

A. It is for insurance on sugar on the crop of 1894; it was taken April 19th, 1895.

Q. The next item is for $92.00, Mrs. James McCormick, May 13th, 1895.

A. That was for molasses barrels bought in April, 1895, for molasses barrels for the crop of 1894.

Q. There is an item, F. W. Webster, broker, $359.59.

A. That was his brokerage commission for the selling of the crop of 1894.

Q. There is a charge of $436.99 for Boudreaux & Lasseigne. State what that was for.

A. It was for cane purchased from Boudreaux & Lasseigne and manufactured into sugar. It was a portion of the crop of 1894. The items on August and September pay-rolls, 1895, were items used for the crop of 1894.

Q. The next item is for $518.90.

63 A. That was the produce tax of 1894.

Q. The next item is $68.40, October 25th.

A. It was for molasses barrels for the crop of 1894.

Q. Now, November 4th, October pay-roll.

A. It was for handling the crop of 1894.

Q. There is another additional, James Beary, produce tax, $395.00.

A. That was for the crop of 1894.

Redirect examination by CLAY KNOBLOCH & SON:

Q. When was the crop of 1894 sold?

A. The dates are mentioned in statement "C" when it was sold, which is correct.

W. F. COLLINS, sworn, says:

Q. You are one of the executors in this case?

A. Yes, sir.

Q. You have lived on the Rienzi plantation for the last few years?

A. For 15 or 16 years.

Q. Look at statement "C 1" and state what you know, of your personal knowledge, of these various items; first, the pay-roll for September, 1894.

A. Yes, sir; that is correct. I will state that these various items I know nothing about; the entire book-keeping was kept by Mr. Allen Smith.

Q. Do you know anything of the pay-rolls?

A. No, sir.

Q. You don't remember how much was paid off for the September pay-roll?

A. I remember this item, September pay-roll.

Q. Is it correct?

A. Yes, sir.

Q. Now, look at the pay-roll. Don't you know something
64 of that pay-roll?

A. No, sir.

Q. How were checks drawn against the succession funds on the banks of New Orleans, and by whom?

A. They were drawn by Mrs. Allen alone. She had my power of attorney, and also Mr. Ogden Smith.

Q. She alone drew the drafts?

A. Yes, sir; later the checks were drawn by Mrs. Allen and Ogden Smith, the other two executors.

Q. Do you know anything of the taxes of thirteen hundred and some odd dollars? When was that paid?

A. After his death.

Q. You know nothing, then, of the books?

A. Nothing at all. Mr. Allen Smith gave the two executors monthly and condensed statements of the expenses.

Q. Have you ever verified any of these statements?

A. No, sir.

Q. Have you any on you?

A. No, sir; I have not.

Q. Mrs. Allen is not in court?

A. No, sir; she is not in the parish.

Q. Where does she live?

A. In New Orleans.

Cross-examination by BEATTIE & BEATTIE:

Q. You say that you remember something of the September pay-rolls?

A. Yes, sir.

Q. Was not that pay-roll divided in two amounts?

A. Yes, sir; that is what I understood.

Q. Was not this the amount, $896.45?

A. Yes, sir.

65 The amount due before the death by Mr. Allen, it appears on both accounts under No. 31 of the first two accounts filed.

THOMAS A. SMITH recalled:

Q. Is your brother, Ogden Smith, in the parish of Lafourche?
A. No, sir.
Q. Where did you leave him yesterday?
A. At home.
Q. What detained him at home?
A. On account of my father's illness. He is seriously ill. Look for him to die day before yesterday.
Q. Where is your father's home now?
A. In New Orleans.
Q. Did your brother, Ogden Smith, attend to the keeping of the books or did you attend to the books?
A. I did.
Q. The checks drawn by Mrs. Allen during the eight months, she signed them alone. Does the stub show the checks drawn?
A. Yes, sir.
Q. The account of Mrs. Bettie Allen, according to the ledger, is correct? She is to account for $3,725.22.
A. Yes, sir.
Q. This $896.45 was the amount placed on both the first accounts, as item No. 31 was the amount of wages due for labor on the plantation up to the death of Mr. Allen?
A. Yes, sir.

MR. W. F. COLLINS recalled:

The statement of Thomas A. Smith relative to the account of Mrs. Bettie Allen is correct, and that she owes the amount of $3,725.22.

Offered in evidence—

66 The checks and statements, checks drawn on the Whitney National Bank of New Orleans, and the statement of the bank; the checks and statements of the Louisiana national bank.

Offered in evidence by Beattie & Beattie—

The testimony of Thomas A. Smith and Ogden Smith, and particularly the admissions of all parties in open court in regard to the accounts then on trial.

It is agreed that in case of appeal in this case that the former transcript of appeal is to serve as a part of the transcript in this case, the documents, evidence, and testimony therein to serve so far as offered herein, subject to all objections hitherto reserved.

It is agreed that this is submitted on briefs to be filed within ten days, and that the judge to decide at chambers on or about the 1st day of November, 1896, whether briefs are filed or not, and the minutes of the court to remain open; the usual entries to be made as to appeal, devolutive or suspensive appeal; the bond to be fixed by the court.

This is agreed by all the counsel.

Testimony closed October 1st, 1896.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

Filed October 1st, 1896.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

STATEMENT C.

Gross Proceeds Crop of 1894.

1894.			
Oct.	26.	Proceeds of sale of 1 bbl. sugar	$12 70
Nov.	10.	Proceeds of sale ½ bbl. sugar	7 10
	26.	Rebate from Standard Oil Co	28 55
67			
Dec.	9.	Proceeds of sale of 2 bbls. sugar	26 76
	14.	Rebate from Standard Oil Co	2 20
	28.	Rebate from Standard Oil Co	2 20
	31.	Proceeds of sale 3 bbls. sugar	41 59
1895.			
Jan.	5.	Rebate from Standard Oil Co	19 75
	10.	Proceeds of sale 3 bbls. sugar	40 50
		Proceeds of sale 200 bbls. molasses	515 67
	12.	Proceeds sale 1 bbl. molasses	3 50
		Proceeds sale 1 bbl. sugar	15 60
Feb.	20.	Proceeds of sale of 339 bbls. molasses	983 69
Mar.	7.	W. F. Collins, feed of horse	33 35
	8.	Proceeds of sale of 300 sacks	7 50
	18.	Proceeds sale of 1 bbl. sugar	13 85
	20.	Proceeds of sale of 63 bbls. molasses	194 58
	28.	Proceeds of sale of 60 bbls. molasses	184 90
Apr.	2.	Proceeds of sale of 1 bbl. sugar	13 95
	7.	Proceeds of sale of sugar	3 25
	8.	Proceeds of sale of 6 bbls. of sugar	67 53
	12.	Rebate from Standard Oil Co	19 12
	19.	Proceeds of sale of 525 sacks	13 00
	24.	Rebate from steamer Lafourche	13 90
	28.	Proceeds of sale of 80 bbls. of molasses	294 88
May	4.	Proceeds of sale of 1 bbl. of sugar	12 20
	11.	Proceeds of sale of sugar	5 70
June	11.	Proceeds of sale of 88 bbls. molasses	302 34
	18.	Rebate from Home Insurance Co	192 73
July	8.	Proceeds of sale of sacks	2 50
Aug.	8.	Proceeds of sale of sugar	14 25
Oct.	4.	Proceeds of sale of 4,994 bbls. sugar	52,560 84
68			
Oct.	13.	Proceeds of sale of sugar	10 30
	15.	Received from John Barkley & Co., storage	131 95
Nov.	7.	Rebate from Home Insurance Co	20 34
	15.	Proceeds of sale of 57 bbls. molasses	140 40
	15.	Proceeds of sale 11 bbls. sugar	119 41
		Gross proceeds sale of crop 1894	$56,072 58

Filed August 29th, 1896.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Filed in evidence Oct. 1st, 1896.
(Signed) P. J. AUCOIN, *D'y Clerk.*

STATEMENT C 1.

Statement of Expenses on Crop of 1894, *Paid After Death of Testator.*

1894.			
Oct.	5.	September pay-roll	1,327.95
"	"	Freight bills and express charges	4.50
"	13.	E. & L. Claudel	16.00
"	"	Freight bills	17.70
"	5.	Stauffer, Ese-elman & Co	49.15
"	"	" " "	23.60
"	8.	Cooperage	44.10
"	9.	Stauffer, Eschelman & Co	17.85
"	10.	I. L. Lyons & Co	9.65
"	"	Stauffer, Eschelman & Co	296.11
"	"	Standard Oil Co	109.07
"	"	T. A. Smith	500.41
"	"	Louis Juilliat	166.00
"	12.	Garcia Stationery Co	8.25
"	11.	J. & M. Swabacher	63.52
"	9.	M. F. Dunn & Bro	4.10
69			
Oct.	10.	Ogden Smith	171.65
"	"	Charles Flaxtanner	450.67
"	21.	Freight bills	2.30
"	9.	Ong, Hiller & Co.	58.69
"	20.	Standard Oil Co	31.69
"	22.	W. F. Collins	11.80
"	"	Standard Oil Co	5.78
"	"	L. Keefe, foundry bill	469.72
"	27.	Standard Oil Co	5.72
"	31.	Freight bills	9.00
"	29.	Ong, Hillier & Co.	27.00
Dec.	29.	Stauffer, Eschleman & Co	2.75
"	1.	Edward Badeaux	7.50
"	5.	Whitney iron works	56.10
"	13.	J. & M. Schwabacher & Co	29.86
"	14.	Woodward, Wight & Co.	33.00
"	13.	I. L. Lyons & Co.	17.15
"	14.	Ong, Hillier & Co.	30.20
"	17.	Ong, Hillier & Co.	6.00
"	21.	Ong, Hillier & Co.	1.20
"	26.	Mrs. J. McCormick	244.80
"	28.	Freight bills	8.19
"	28.	S. Blum & Sons	7.90
"	28.	Ong, Hillier & Co.	9.00
1895.			
Jan.	1.	Freight bills	5.05
"	10.	Louis Juilliat	472.00
"	5.	Freight bill	10.70

"	12.	Postage stamps	1.00
"	10.	December pay-roll	6,389.85
"	2.	A. J. Clement & Bro.	13.50

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Jan.	4.	A. Molaison	14.68
"	1.	J. L. Aucoin	15.95
"	12.	J. D. Babin, assistant manager	166.67
"	12.	State & parish taxes, year 1894	1,348.31
"	"	Jake & John Irvine	3.00
"	15.	Ogden Smith	333.34
"	15.	Charles Flextanner, carpenter	173.33
"	15.	T. A. Smith	250.00
"	16.	W. F. Collins	86.92
"	16.	Freight bill	10.00
Nov.	7.	Home Insurance Co.	315.00
"	10.	Standard Oil Co.	27.05
"	13.	Standard Oil Co.	5.72
"	"	October pay-roll	3,866.70
"	16.	Standard Oil Co.	5.72
"	"	Stauffer, Eschelman & Co.	4.68
"	19.	Stauffer, Eschleman & Co.	8.05
"	22.	Standard Oil Co.	27.05
"	26.	Ben. Johnson, shoeing mules	4.00
"	"	Telegraph charges	6.70
"	18.	Freight bills	12.35
"	6.	Rene J. Munch	16.00
"	10.	I. L. Lyons & Co.	26.18
"	12.	J. & M. Schwabacher	11.58
"	14.	H. W. Frost	95.58
"	17.	Ong, Hillier & Co.	24.57
"	23.	Freight bills	1.50
"	24.	Ong, Hillier & Co.	27.00
"	25.	Freight bills	9.00
"	30.	J. & M. Schwabacher	21.66

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Dec.	6.	November pay-roll	5,206.60
"	2.	Freight bills	1.20
"		Freight bill	12.00
"	11.	Stauffer, Eschleman & Co.	9.90
"	12.	Standard Oil Co.	27.05
"	11.	Standard Oil Co.	5.20
"	22.	Standard Oil Co.	60.13
"	26.	Standard Oil Co.	5.57
"	26.	Stauffer, Eschleman & Co.	7.80
Jan.	1.	L. Keefe, foundry bill	675.58
"	"	C. Perrilliat, cooperage	200.53
"	1.	Peltier & Delaune, beef bill	44.30
"	25.	Freight bill	20.00
"	24.	C. Perrilliat, cooperage	215.00

"	19.	Thibodaux bridge	25.05
"	"	H. Tetraux	5.00
Feb.	12.	R. R. McBride	20.95
"	8.	Charles Flaxtanner, 79 watches	59.25
"	"	One doz. Moss collars	7.50
Mar.	8.	John W. Trotter	4.70
"	5.	Ogden Smith, expenses to city	7.50
"	7.	James Beary, sheriff, produce tax	22.00
Apr.	5.	Mrs. J. McCormick, cooperage	199.40
"	7.	March pay-roll	81.85
"	8.	Barker & Lepine, for coal	122.09
"	10.	Francis McCulla, cooperage	31.25
"	19.	Home Insurance Co.	385.47
May	11.	April pay-roll	21.90
"	13.	Mrs. J. McCormick, cooperage	92.00
Jun- 72	19.	F. W. Webster, broker	349.58
Jun-	19.	Boudreaux & Lasseigne, cane bought	436.99
Sep.	13.	August pay-roll	8.70
Oct.	13.	September pay-roll	22.00
"	15.	James Beary, sheriff, produce tax	518.90
"	25.	C. Perrilliat, cooperage	68.40
Nov. 1896.	4.	October pay-roll	86.75
Jan.	28.	James Beary, sheriff, produce tax	3.95
		Total taxes and expenses paid after death of testator	$27,238.06

Filed August 29th, 1896.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

STATEMENT C 2.

Expenses Paid Prior to Death of Testator.

Crop of 1894.

1894.			
Jan.	13.	Paid day hands	90.65
"	20.	" " "	20.45
"	27.	" 25 day hands	74.10
Feb.	5.	Files and nails	9.14
"	7.	Pay-roll for the month of January	1,971.30
"	10.	Eight sacks of salt	7.35
"	"	Paid twelve Italian laborers	169.90
"	"	Paid day hands	46.25
"	13.	Iron	14.20
"	15.	25 tons of cotton-seed meal	521.25
"	15.	Plantation butcher bill	29.63

"	16.	Steel	7.07
Mar.	7.	27 tons of cotton-seed meal	573.37
"	8.	Shoeing mules	5.00
"	"	Feed	54.60
"	"	50 bags corn	67.88

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Mar.	17.	6,428½ bushels of corn	2,903.60
"	"	26 day hands	70.30
"	19.	Two tons of hay	34.45
"	20.	27½ tons cotton-seed meal	573.37
Apr.	2.	36 bushels peas	41.80
"	14.	26 day hands	75.15
Apr.	18.	Pay-roll for month of March	1,811.85
"	20.	Expense coal-boat	18.00
"	21.	23 day hands	81.00
"	28.	26 day hands	90.85
May	3.	300 bushels peas	450.25
"	"	15,636 bbls. coal	4,378.08
"	7.	50 tons of cotton-seed meal	1,017.50
"	"	Freight	20.25
"	19.	25 day hands	94.10
"	22.	Pay-roll for month of April	1,967.80
"	26.	27 day hands	68.90
Jun-	8.	Freight, Str. Lafourche	60.20
"	9.	27 day hands	85.50
"	18.	Pay-roll for month of May	1,813.25
"	23.	24 day hands	78.15
"	"	Five ditchers, orders	186.10
"	30.	Fifteen day hands	30.75
July	14.	23 day hands	37.25
"	19.	Freight, Str. Lafourche	22.15
"	"	Pay-roll for month of June	1,551.95
Aug.	8.	Freight and express	1.45
"	15.	Pay-roll for month of July	1,475.30
Sep.	8.	55 sacks of corn	98.86
			$22,800.30

74 Total expenses on crop of 1894 up to date of death of testator $22,800.30

Filed Aug. 29th, 1896.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Filed in evidence October 1st, 1896.
(Signed) P. J. AUCOIN, *D'y Clerk.*

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"STATEMENT D."

Proceeds and Expenses, Showing Deficit of $748.19.

Crop of 1895.

1895.			
Feb.	7.	January pay-roll	547.05
	20.	Postage stamps	2.00
	23.	Freight bill	7.25
	22.	McCloskey Bros	65.73
Mar.	6.	McCloskey Bros	132.55
	7.	February pay-roll	790.25
	8.	Freight bills	14.50
	9.	Pay-roll, day hands	77.70
	16.	Stauffer, Eschleman & Co	12.49
	25.	Pay-roll, day hands	98.75
	"	Telephone, McCloskey Bros	.50
	"	McCloskey Bros	77.48
Apr.	4.	Postage stamps	1.00
	7.	March pay-roll	1,407.15
	8.	Chas. Flextaner, month of March	45.00
	9.	J. Y. Gilmore	2.00
	11.	Stauffer, Eschleman & Co	6.30
	12.	W. C. Hardwick	1,315.40
	"	" "	80.00
	24.	Freight bills	6.63
	"	Postage stamps	1.00

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Apr.	23.	P. Toups, Jr., 21 bbls. of corn	21.00
	28.	Protest fees	4.05
May	3.	Express charges	.35
	6.	Telegraph charges	.70
	11.	April pay-roll	1,441.30
	"	Onezie Toups	25.00
	18.	C. C. Chiasson	8.00
	"	Atu Chiasson	7.50
	"	Pay-roll, day hands	89.75
	25.	W. G. Coyle & Co	4,300.29
Jun-	1.	Pay-roll for month of May	1,350.20
	"	J. L. Aucoin	12.25
	"	A. Molaison	4.65
	3.	McCloskey Bros	156.06
	6.	Freight bills	15.40
	14.	McCloskey Bros	47.96
	15.	Freight bills	4.65
	18.	Stauffer, Eschleman & Co	26.55
	"	McCloskey Bros	109.88
	19.	Freight bills	10.60
	21.	Marks & Rittener	661.50
	23.	Tabor Bros	3.50

	20.	B. F. Avery & Sons	2.75
	25.	J. T. Gibbons	232.85
	27.	Freight bills	23.32
	22.	Pay-roll, day hands	71.35
	"	T. A. Smith, expenses in the city	6.00
Jul-	8.	Pay-roll for month of June	1,212.95
	"	J. T. Gibbons	207.31
	9.	Freight bills	19.20
76			
Jul-	10.	Postage stamps	1.00
	13.	Pay-roll, day hands	51.15
	15.	C. Perrilliat, cooperage ac	727.50
	25.	Stauffer, Eschleman & Co	3.40
	27.	Lovincy Jefferson	35.00
Aug.	1.	Rene J. Munch	8.00
	8.	Pay-roll for month of July	1,360.65
	"	Expenses of Ogden Smith to New Orleans	6.00
	12.	Stauffer, Eschleman & Co	17.53
	"	" " "	40.12
	27.	" " "	14.93
Sept.	2.	Ben. Johnson, shoeing mules	9.50
	"	Delbert Engineering Co	8.02
	4.	Freight bills	.25
	10.	Stauffer, Eschleman & Co	12.95
	13.	Pay-roll for month of August	908.20
	"	H. W. Frost, lumber	21.29
	14.	John Granger, 1 doz. collars	7.20
	18.	Hamp Hodge, " "	7.20
	21.	P. J. Butler	47.50
	15.	Freight bill	.30
	30.	Standard Oil Co	42.19
Oct.	2.	Freight bill	3.35
	8.	Postage stamps	2.00
	"	J. P. Hogan	35.00
	13.	Pay-roll for month of September	1,243.25
	17.	S. Blum & Sons	8.25
	21.	W. H. Ragan & Co	30.70
	22.	Marks & Rittener	11.24
	23.	Standard Oil Co	17.15
77			
Oct.	23.	I. L. Lyons & Co	72.53
	"	J. & M. Schwabacher	88.53
	"	E. & L. Claudel	12.50
	24.	Freight bills	15.35
	30.	Standard Oil Co	6.30
	25.	C. Perrilliat, cooperage	231.60
	24.	Stauffer, Eschleman & Co	106.93
	26.	C. Perrilliat	60.00
Nov.	4.	Home Insurance Co	262.50
	"	Bank of Thibodaux, exchange	.25

		" Pay-roll for month of October	2,250.20
	5.	J. G. Oschwald	1.25
	6.	Freight bill	.70
	13.	Home Insurance Co	70.00
	"	Standard Oil Co	6.30
	"	" " "	17.15
	14.	Freight bills	1.45
	16.	Stauffer, Eschleman & Co	7.25
	"	I. L. Lyons & Co	48.40
	17.	Freight bill	.25
	25.	I. L. Lyons & Co	13.90
	27.	Standard Oil Co	17.15
	28.	Freight bill	1.90
	29.	Home Insurance Co	84.00
	"	Standard Oil Co	6.06
Dec.	2.	Express charges	.70
	"	A. Molaison	2.80
	3.	J. L. Aucoin	26.05
	5.	Home Insurance Co	105.00
78			
Dec.	12.	Pay-roll for month of November	5,931.05
	"	Home Insurance Co	63.00
	16.	L. Keefe	263.27
	"	J. P. Hogan	19.50
	"	T. A. Smith's expenses to New Orleans	6.00
	"	Telegraphing	1.00
	"	Postage stamps	1.00
	28.	Tabor Bros	2.80
	"	Frank McCulla, cooperage	131.25
	"	Jas. Beary, sheriff, taxes	1,047.55
1896.			
Jan.	1.	Thibodaux bridge	40.90
	"	D. Cancienne	40.00
	2.	A. J. Clement & Bro	2.25
	"	Bourg & Bergeron, for meat	11.85
	"	Pay-roll for month of December	422.30
	3.	Roth Drug Co	25.95
	4.	F. Hoffman	4.00
	5.	Ogden Smith	31.10
	6.	W. F. Collins	31.36
	10.	Frank McCulla, cooperage	52.50
	15.	R. R. McBride	20.05
Feb.	4.	Pay-roll for month of January	9.80
	"	Postage stamps	.74
Mar.	4.	Postage stamps	1.00
Apr.	20.	Jas. Beary, sheriff, produce tax	221.60
Jun-	2.	T. A. Smith, 5 months' salary	375.00
		Total expenses	$31,722.24

79 *Crop of* 1895.

Proceeds:

1895.				
Mar.	25.	Proceeds sale	6 sacks of corn	9.60
Nov.	30.	" "	60 bbls. molasses	231.51
Dec.	4.	" "	60 bbls. molasses	261.93
	6.	" "	11 bbls. sugar	153.15
	"	" "	4 bbls. sugar	56.05
	10.	" "	30 bbls. molasses	130.72
	"	Received from J. A. Andrews & Sons		10.00
	12.	Proceeds sale of sugar		32.05
	"	" "	5 bbls. sugar	68.05
	14.	" "	5 bbls. sugar	68.90
	"	" "	2 bbls. sugar	30.15
	19.	" "	60 bbls. molasses	386.53
	28.	" "	70 bbls. molasses	450.62
1896.				
Jan.	4.	" "	6 bbls. sugar	90.70
	26.	" "	136 bbls. molasses	888.37
Feb.	3.	" "	1 bbl. sugar	16.20
	"	Rebate from Home Insurance Co.		112.50
Apr.	8.	Proceeds sale	1,968 bbls. sugar	27,949.55
	"	" "	2 bbls. sugar	27.47

Total proceeds of crop of 1895		$30,974.05
Total expenses	$31,722.24	
Deficit		748.19
	$31,722.24	$31,722.24
Deficit of crop of 1895		748.19

Filed Aug. 29th, 1896.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Filed in evidence October 1st, 1896.
(Signed) P. J. AUCOIN, *D'y Clerk.*

80 *Opinion and Judgment.*

18th Jud. Dist. Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417, Probates.

On oppositions to the final account.

The executors W. F. Collins and Mrs. Bettie Allen have filed a final account herein, and the executor Ogden Smith, disagreeing with them in his interpretation of the matters arising in the course of their executorship and administration, has also filed a final account, setting forth his proposed distribution of the remaining assets on hand.

By agreement of record, these two accounts are to be taken as answers or oppositions to each other and the whole matter is to be considered and disposed of in one decree.

All the heirs have filed oppositions to the final account of W. F. Collins and Mrs. Bettie Allen, opposing her distribution of the bounty money to herself, alleging that it formed no part of the crop of 1894 or of the proceeds thereof and is unwilled and seeking to charge her with the portion of the expenses of the crop of 1894 incurred prior to the death of Mr. Allen, and also with the deficit in the crop of 1895.

All the heirs except Mrs. De Berry, Mrs. Boyle, and Mrs. Baker concur in the account of Ogden Smith and pray for its homologation, and the three heirs named oppose that portion of his account in which it is proposed to leave them out entirely in the distribution of the bounty money, they claiming to be entitled to their share as heirs in it.

All the creditors of the estate have been paid and all the special legacies have been delivered, except the special legacies to Mrs.
81 Allen of the proceeds of the crops, as provided for in the will.

The only questions before the court are questions of law, and the first is, Does Mrs. Allen get the proceeds of the crop of 1894 after deducting the expenses incurred by the executors after the death of the testator in saving the crop, or must the expenses incurred prior to the death of the testator be also deducted?

Mrs. Allen and W. F. Collins, co-executors, contend that only the expenses subsequent to the death of Mr. Allen must be deducted, and say that these were fixed by judgment on the trial of the first account filed by Ogden Smith, executor.

The executor Smith and the heirs, on the other hand, maintain that the whole expenses of making the crop, those preceding as well as those following the death of the testator, must be deducted from the gross proceeds of the crop, and the remainder, the net proceeds, turned over to Mrs. Allen.

They contend that the supreme court has decided her entitled to the *net* proceeds, and the *net proceeds*, they argue, are what is left after deducting all the costs of production.

As a general proposition, this is undoubtedly correct, but the expression of the supreme court in reference to the *net proceeds* of the crop in this case must be taken in conjunction with the provisions of the will on the subject and be construed in the light of such provisions. It must be borne in mind also that the account of Ogden Smith, executor, then before court, referred to the net proceeds of the crop of 1894, and proposed to distribute said net proceeds to the legatees of Rienzi plantation, "provided said legatees shall reimburse to the estate expenses incurred to make and save said crop since the death of the testator, as per statement 'A' herewith (therewith) filed, amounting to nineteen thousand seven hundred
82 and thirty and $\frac{26}{100}$ dollars, $19,730.26;" that this court in passing upon the issue then presented adopted the theory thus advanced by the executor Smith, and that it was when commenting upon and reversing that portion of the judgment of this

court that the supreme court used the expression net proceeds and declared Mrs. Allen to be entitled under the will to the net proceeds of the crop; but the question what are the net proceeds, beyond what was presented by the pleading, was not passed upon by the court.

The clause of the will under which the court gave the crop of 1894 to Mrs. Allen is in these words:

"As I fear property will be very low I give my executors five years to work for a good price. In the meantime that they are waiting to sell, the place can be rented or worked so as to pay all taxes and other charges, any over that to go to Mrs. Bettie Allen's credit."

This language is plain and unambiguous; it provides for the future renting or working of the plantation to pay the taxes and charges incurred by the plantation while so rented and worked, and that the surplus of the rental or proceeds of crop to be turned over to Mrs. Allen; but it does not provide for or contemplate the payment of debts contracted by the testator himself prior to his death, whether for making the crop or not. The will speaks for the future and directs what the executors shall do in the management of the plantation, namely, rent or work, so as to raise revenues to pay the taxes and charges while waiting for a better price, and to turn over whatever profits are made in thus renting or working it to Mrs. Allen.

It was this view of it which led me to the conclusion that the crop hanging by the root at the time of testator's death
83 passed to the legatees of the plantation, and not to Mrs. Allen, under the foregoing clause of the will.

That the supreme court has taken a different view of the subject-matter makes no difference in my opinion in the settlement of the point now under consideration. The language of the will too plainly provides for the future to admit of charging up against the crops debts contracted and in great bulk paid by the deceased prior to his death.

It is clear to my mind that the only charges against the crop of 1894 are the expenses incurred in saving and preparing same for market, fixed in the first tableau of Executor Smith, already passed upon by the court, at nineteen thousand seven hundred and thirty and $\frac{26}{100}$ dollars ($19,730.26), and such further charges as may have been subsequently incurred in selling the crops and in preparing it for market.

The amount of such subsequent charges is, as shown by statement "X" annexed to final account of Mrs. Allen and Collins, executors, two thousand seven hundred and sixty-six and $\frac{13}{100}$ dollars ($2,766.13), which, added to the first amount, makes $22,496.39 to be deducted.

A question has arisen whether the State and parish taxes of 1894 should also be deducted from the proceeds of the crop of 1894 under the clause of the will. It is contended on the one hand that they should not because they had become due before the death of testator, and therefore became a charge against the estate, and on the other

hand that the will specially provides for the payment of the taxes out of the proceeds of the crop.

I consider this point settled by the plea of *res adjudicata*. The taxes were proposed on the first tableau to be paid out of the common fund of the estate as a debt of the estate. This was specifically opposed, and it was sought to charge the legatees of the
84 plantation with such taxes on the ground that they were levied on the plantation and constituted a charge against it. The opposition was dismissed by this court and the taxes were ordered to be paid out of the general fund of the estate or a debt of the estate, and on appeal this portion of the judgment was undisturbed. It is therefore a settled matter.

The executors, Mrs. Allen and Collins, propose to pay a deficit of $916.19 on the crop of 1895 out of the unwilled cash of the estate on the theory that Mrs. Allen never consented that the plantation should be worked for her account in 1895.

The executor Smith, on the other hand, and the heirs, contend that this deficit must be paid out of the proceeds of the crop of the previous year.

I think the contention of the latter is well founded. The will already quoted contemplated that the place should be rented or worked by the executors pending a sale and while waiting for a good price, in order to pay the taxes and other charges of the place, and that the surplus realized at the close of operations should be put to the credit of Mrs. Allen.

Besides these deductions, I am of opinion that the commission of the executor Collins on the gross proceeds of the crops of 1894 and 1895, to wit, $\frac{1}{3}$ of $2\frac{1}{2}$ per cent. on $87,046.63, equal to $725.39, should also be paid out of the proceeds of said crops, as it was incurred in the administration of said plantation in making, raising, and saving said crops. It is properly a charge against said crop, which ought to be paid out of its proceeds under the clause of the will under consideration.

We now pass to the consideration of the bounty money.

I am clearly of the opinion that the bounty money forms no part of the crop proper or the proceeds thereof. Though based
85 on the crop as a means of calculation and conditioned on the production of the crop by the owner of the plantation, under certain rules, it was a pure gratuity from the Government.

It has been held in Delogny *vs.* Creditors, 48 An., —, to be separate and distinct from the crop and the proceeds thereof.

It does not therefore go to Mrs. Allen under the will, but to the heirs as an unwilled portion.

Mrs. De Berry, Mrs. Boyle, and Mrs. Baker, although held to be cut out under the will from participation in the unwilled portion of the estate, claim their shares as heirs in the bounty money on the ground, substantially, that it is a gift from the Government, made after the death of deceased, and consequently does not fall into his succession, but goes to his heirs.

The bounty was given after the death of deceased, but conditioned on his prior fulfillment of certain prerequisites prescribed by

the McKinley bill. Those conditions had been observed by deceased, the license obtained, and the equitable claim in payment of which the allowance of the Government was made had been created prior to the death of the testator. The gift was to the testator or estate and not to his heirs, and consequently formed part of his estate.

The three opponents named are not entitled to participate in the distribution, having been cut out by the terms of the will, and the bounty money, after deduction made of the costs of collecting same, $321.70, and the executors' commission thereof, $96.41, equal to $418.11, must be distributed among the remaining heirs.

For the reasons hereinabove assigned it is ordered and decreed that the accounts herein filed by the executors be recast as follows:

86 From the gross proceeds of the crop of 1894, to wit		$56,072.58
Deduct expenses incurred since death of testator, as hereinabove fixed		22,496.39
		$33,576.19
Deduct further:		
Deficit on crop of 1895, as fixed in account of Smith, executor, and established by evidence	$748.19	
Executor's commission	725.39	
		1,473.58
Net proceeds of crops of 1894 & 1895		$32,102.61
This amount is to be paid Mrs. Allen as legatee of the surplus of the proceeds of crops under the will, but she must restore amount already drawn and due estate by her, to wit		3,725.22
Balance due Mrs. Allen and to be paid her out of the proceeds of crop		$28,377.39

Considering that the said account makes a correct showing of the unwilled cash and of the payments of the legacies and of debts under the judgment herein heretofore rendered, except as to the item of reserved costs, $2,072.43, the item of amount due by Mrs. Allen and the bounty, it is further ordered and decreed that said final account of the executors, Mrs. Allen and W. F. Collins, be, and the same is, approved and homologated, except in so far as hereinabove amended and as hereafter amended as to the items just named.

It is further ordered and decreed that as to these items the account be reformed and recast as follows, to wit:

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Amount reserved for costs as stated in said account, to wit.		$2,072.43
Amount recovered from Mrs. Allen... ...		3,725.22
Amount received from bounty...		11,569.35
		$17,367.00
Deduct therefrom:		
Costs attending collection of bounty.....	$321.70	
Executor's commission..	96.41	
Reserved for future costs... ...	300.00	
		748.11
Balance		$16,618.89

To be distributed as follows:

To estate of Thos. H. Allen, Sr., $\frac{1}{3}$, equal to		$5,539.63
To the children of Myra Turner, $\frac{1}{2}$ of $\frac{1}{3}$ each:		
John B. Turner	$2,769.81½	
Wm. A. Turner	2,769.81½	
		5,539.63
To the five children of Cynthia Smith, $\frac{1}{5}$ of $\frac{1}{3}$ each:		
Ogden Smith ...	$1,107.92⅗	
T. A. Smith.....	1,107.92⅗	
Gaston Smith...	1,107.92⅗	
Fred W. Smith... ...	1,107.92⅗	
Mrs. Nellie Houchens...	1,107.92⅗	
		5,539.63
		$16,618.89

Thus done, read, and signed in chambers, by agreement of all parties, at Thibodaux, La., this 9th day of November, 1896.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Let a suspensive appeal be granted to all parties feeling aggrieved by the judgment herein, upon furnishing bond in the sum
88 of one hundred and twenty-five dollars within 10 days from notification of the judgment herein by the clerk, and a divolutive appeal is likewise granted to all parties on furnishing bond in the like sum of one hundred and twenty-five dollars, conditioned according to law.

Done and signed in chambers, by consent of all parties, this 9th day of November, 1896.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Filed Nov. 9th, 1896.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

Suspensive Appeal Bond, Smith Heirs.

THE STATE OF LOUISIANA, }
Parish of Lafourche. }

Eighteenth Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417, Probates.

Know all men by these presents that we, Thomas Allen Smith, Fred W. Smith, Ogden Smith, Gaston Smith, and Mrs. Nellie Houchens, all residing in the city of New Orleans, parish of Orleans, this State, as principals, and Ozemee Naquin, residing in the parish of Lafourche, this State, as surety, are held and bound unto Charles J. Barker, clerk of the 18th judicial district court of the parish of Lafourche, in the sum of one hundred and twenty-five dollars, lawful currency of the United States, to pay which we bind ourselves *in solido*.

Dated, parish of Lafourche, this 17th November, 1896.

The conditions of the foregoing obligation are such that whereas the principals herein have obtained an order for a suspen-
89 sive appeal from the judgment rendered by said court in the above entitled and numbered cause on the 9th November, 1896, made returnable according to law, now this bond is given as surety that said principals, as appellants, shall prosecute the said appeal and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied from the sale of their property, if they be cast, or that the said Ozemee Naquin shall be liable in their place.

(Signed) O. NAQUIN.

THE STATE OF LOUISIANA, }
Parish of Lafourche. }

Ozeme Naquin, surety on the within bond, being sworn, says that over and above all his debts and legal exemptions he is worth, in property liable to execution, the full amount of the foregoing bond.

(Signed) O. NAQUIN.

Sworn to and subscribed before me this 17th November, 1896.

(Signed) EARLE KNOBLOCH,
Notary Public.

Filed Nov. 17th, 1896.

(Signed) P. F. LEGENDRE, *Dy Clerk.*

Suspensive Appeal Bond of Ogden Smith, Co-executor.

STATE OF LOUISIANA:

18th Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417.

Know all men by these presents that we, Ogden Smith, executor, as principal, and Ozeme Naquin, residing in the parish aforesaid, as surety, are held and bound unto Charles J. Barker, clerk of said court, in the sum of one hundred and twenty-five dollars, to
90 pay which we bind ourselves *in solido*.

Thus dated, at the parish aforesaid, this 17th day of November, 1896.

Now, the condition of the foregoing obligation is such that whereas the said principal herein has obtained an order for a suspensive appeal from the judgment rendered by said court on the 9th day of November, 1896, to the honorable the supreme court, sitting in New Orleans, of the State of Louisiana, returnable according to law, now this bond is given as surety that said principal, as appellant, shall prosecute the said appeal, and that he shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in said appeal; otherwise that the said Ozeme Naquin, surety, shall be liable in his place.

(Signed) O. NAQUIN.

Ozeme Naquin, surety, sworn, says that over and above all his debts and legal exemptions he is worth in property liable to execution the full amount of said bond.

(Signed) O. NAQUIN.

Sworn to and subscribed before me, notary public, this 17th day of November, 1896.

EARLE KNOBLOCH,
Notary Public.

Filed November 17th, 1896.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Appeal Bond of Mrs. Allen and W. F. Collins, Executors.

STATE OF LOUISIANA:

18th Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417.

91 Know all men by these presents that we, W. F. Collins and Mrs. Bettie Allen, executors, as principal, and Samuel Blum, residing in the parish aforesaid, as surety, are held and bound unto Charles J. Barker, clerk of said court, in the sum of one hun-

dred and twenty-five dollars; to pay which we bind ourselves *in solido.*

Thus dated at the parish aforesaid this 18th day of November, 1896.

Now, the condition of the foregoing obligation is such that whereas the said principal herein has obtained an order for a suspensive appeal from the judgment rendered herein by said court on the 9th day of November, 1896, to the honorable supreme court, sitting in New Orleans, of the State of Louisiana, returnable according to law; now, this bond is given as surety that said principal, as appellant, shall prosecute the said appeal, and that he shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in said appeal; otherwise that the said Samuel Blum, surety, shall be liable in his place.

(Signed) W. F. COLLINS, *Executor.*
MRS. BETTIE ALLEN, *Executrix,*
Per BEATTIE & BEATTIE, *Attorneys.*
SAM. BLUM.

Samuel Blum, surety, sworn, says that, over and above all his debts and legal exemptions, he is worth in property liable to execution the full amount of said bond.

Sworn to and subscribed before me, deputy clerk of court, this 18th day of November, 1896.

(Signed) SAM. BLUM.

P. F. LEGENDRE,
D'y Clerk of Court.

Filed Nov. 18th, 1896.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

92 *Certificate of the Clerk of Court.*

THE STATE OF LOUISIANA:

18th Judicial District Court, Parish of Lafourche.

I, the undersigned, do hereby certify that the foregoing pages do contain a true and correct transcript of all the documents filed, testimony and evidence adduced, and all the proceedings had upon the trial of the oppositions to the final accounts in the succession of R. H. Allen, No. 1417 on the probate docket of the 18th judicial district court of the State of Louisiana, sitting in and for the parish of Lafourche.

In testimony whereof witness my hand and the impress [SEAL.] of the seal of my office this 21st day of November, A. D. 1896.

(Signed) P. J. AUCOIN,
D'y Clerk of said Court.

93 Transcript of appeal in the matter of the succession of Richard Henry Allen, No. 11998 on the docket of the supreme court of the State of Louisiana, used by agreement of counsel (see page 66 of this Record) on this appeal, bearing the same title and numbered 12331.

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

In the Matter of the Succession of RICHARD HENRY ALLEN.

Filed November 27th, 1897.
(Signed) PAUL E. MORTIMER,
Deputy Clerk.

STATE OF LOUISIANA:

18th Judicial District Court, Parish of Lafourche.

Succession of RICHARD H. ALLEN. No. 1417.

Petition for Probate of Will, Inventory, &c.

To the honorable the eighteenth judicial district court in and for the parish of Lafourche:

The petition of William F. Collins, Ogden Smith, and M. Elizabeth Greene, the widow of Richard Henry Allen, late a resident of this parish, all residing in this parish, respectfully represents:

That Richard Henry Allen, a late resident, as aforesaid, of this parish, died in this parish on or about the 19th day of September of this year.

That he left a last will and testament, olographic in form, entirely written, dated, and signed by him, and also considerable
94 property.

That by the said last will and testament your petitioners believe they are named the executors and the executrix thereof; that the deceased left no forced heirs.

Petitioners aver that they have given due notice of this application for the probate of this last will to all the presumptive heirs of the deceased who reside in this parish, namely, Ogden Smith, Allen Smith, and Nellie Smith, widow of Houchens.

Petitioners aver that there is necessity for an inventory of this estate.

Wherefore petitioners pray that the said last will and testament of the late Richard Henry Allen be admitted to probate, and that they be appointed and confirmed as testamentary executors and executrix thereof, without bond, and that upon their qualifying as such in accordance with law letters testamentary issue to them, and that an inventory and appraisement of the estate be made, and for all and general relief, &c.

(Signed) BEATTIE & BEATTIE, *Attorneys.*

Order.

Let the will presented be produced, and let evidence as to the genuineness of the same be produced before me this 24th day of September, 1894, at 3 o'clock p. m., at the court-house, in the town of Thibodaux, La.

Granted and signed in chambers, in the parish of Lafourche, this 24th day of September, 1894.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Filed Sept. 24th, 1894.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

95 Succession of RICHARD H. ALLEN. No. 11998.

Will.

Ne varietur.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Page No. 1, May 20th, 1894.

I Richard H. Allen of the parish of La Fourche State of Louisiana being of sound mind, and recollecting the uncertainty of life do make this my last will and testament. I revok all testamentary dispositions made previously I dclare this to be my last will.

I give to my dear wife Bettie Allen all my corporal movables such as furnature, bedding, linin silver plate, china ware &c. all my stock of cattle all my horses and carriages she is to ocupy the homestead without reservation or distinction till the plantation is disposed of I authorise her to take immediate possession of the same for her own use without inventory or controle of any kind. My debts are small I have no children nor forsed heirs. I wish the tribunals of La. to have nothing to do with my estate unless somting arises that *that* cannot be avoided I do this for econimy.

(Signed) R. H. ALLEN OR RICHARD H. ALLEN.

Ne varietur.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Ne varietur.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Page 2, continued from page 1st, May 20th, 1894.

In addition to the above gifts I give to my dier wife Bettie Allen four thousand dollars' worth of city of New Orleans bonds four per cent. interest-bearing bonds, with coupunds. I give her
96 also two thousand three hundred and fifty pounds sterling in the hands of Bearing Bro. &c. *limited* more or less (see their ac. currents in chst.)

This will be ovr $14,000 dollars for a house I gave her at our marriage not recorded but good. I give to my wife Bettie Allen one-half on my Rienzi plantation and one-half of all tools mules &c. The names of my executors &c will be named hereafter. My executors shall have from one to five years to sell and clos up the estate as I fear property will be verry low and dull. They can sell part cash part on time 8 per cent interest with vendor's lean I will that my wife do have one half of everrything belongin to Rienzi except the claim due me by the U States that and other property I will speak of further on.

(Signed) RICHARD H. ALLEN.

Ne varietur.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Ne varietur.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Page 3, continued from page 2 on*d* May 20th, 1894.

I appoint as my executors Ogden Smith and W. F. Collins residing on Rienzi plantation I also appoint Mrs. Bettie Allen executrix. I give them ful power to sell Rienzi plantation when ever they find a good offer all the property there belonging. When it is sold half of all the proceed cash notes &c is to belong my wife Bettie Allen The other hafe will be spoken of here after As I fear property will be very low I give my executors five years to work for a good price in the meantime that they are waiting to sell, the place can be rented or worked so as to pay all taxes and other charges, any over that to go to Mrs. Bettie Allen's credit. The other half of Rienzi and and a clain I hold against the Government of the United States for army supplies I think is about one hundred thousand dollars These two amounts or halfs I intend to give to the families of my brother Thomas H Allen's four children R. H. Allen Jr for his family's use Thomas H Allen Jr for his wife and children Harry Allen for his wife and children Mrs Mary Louis wife of J. C. Leatham of New York city.

(Signed) RICHARD H. ALLEN.

97 *Ne varietur.*

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Ne varietur.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Page 4, continued from page 3, May 20th, 1894.

And to the five children of my sister Cynthia A. Smith Gaston Smith, Fred W. Smith Jr. Mrs Nellie Houchens, Ogden Smith & Thomas A. Smith. My three nieces Mrs Jennie Boyle, Mrs Bettie De Berry, Mrs Ellen B. Baker have received each five hundred

dollars I will that they receive five hundred dollars more in cash and have no interest in any other claim.

My brothr's firm in Memphis Tenn owes me $17,369 dollars seventeen thousand three hundred and sixty-nin dollars loaned them he having surrendered all his estate to his credited which he thinks will pay all he ows. I thirefore give this sum $17,369 to the wife of of my brother for herself and all the dividends on that amount

To Mrs Sallie Cragin I give five hundred dollars to Walter Collins I five two hundred dollars. To my faithful servants Lizzie Harrison and Mat Dickerson I give one hundred and fifty dollars each

To my sister Myra Turner's two sons John B and William Turner I give John B his note for three hundred dollars deducteing interest. To Will I have given as much as I intend in cash.

(Signed) RICHARD H. ALLEN.

Ne varietur.
(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Ne varietur.
(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

No. 5, continued from No. 4.

I hold Fred W. Smith note for five hundred dollars this note can be given him without counting inerest as part of his share heretofore given him. My gold whtch and hain I give to my namesake R H Allen son of Thomas H Allen Jr of Memphis Tenn to be given him when of age.

(Signed) RICHARD H. ALLEN.

Ne varietur.
(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

June the 15th, 1894.

98 Codicil No. 1. I will that Mrs. Cragin's two small boys shall be given an English education at expense of the estate I will that my executors shal not give bond as I think them honest men I prefer they pay off the cash donations as soon as possible.

(Signed) RICHARD HENRY ALLEN.

Ne varietur.
(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Indorsement: Document A. Last will and testament of R. H. Allen. Probated Sept. 24th, 1894, and filed. (Signed) L. P. Caillouet, judge 18th jud. dist. Filed Sept. 24th, 1894. (Signed) P. F. Legendre, d'y clerk.

Petition of Executors to Cultivate Plantation, &c.

THE STATE OF LOUISIANA:

Eighteenth District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417.

To the honorable the eighteenth district court in and for the parish of Lafourche:

The petition of Bettie Allen, executrix, and of Ogden Smith and William F. Collins, executors, of the last will of Richard H. Allen, deceased, whose succession has been opened herein, would respectfully represent:

That they have on their hands the very large plantation left by the deceased, and that they are advised that the same cannot now be sold save at a very great sacrifice, and that under present conditions it is impossible to lease the same; that there is on the plantation a large amount of seed cane which will be lost if it is not planted and thereby the value of the plantation will be diminished.

That besides it is necessary to work and cultivate the stubble on the plantation and to plant the corn crop; that by the will they are given this power and authority; that lately the board
99 of levee commissioners of the Lafourche basin district have begun to and are now carrying on the construction of a large levee in the front of the said plantation, which necessitates a change in the location of the public road in front of the same, and petitioners have received orders from the proper authorities to repair and place in order the said road; that this same levee work requires the removal of the pump and engine in front of the plantation so as to put them within the lines of the plantation; that this same levee work necessitates the rebuilding and repair of the front fences on the public road.

That the railway or tramway on the plantation also needs to be put in order, so as to make it fit for transporting the crop of sugar now on the place; that the said crop must necessarily be hauled out to be sold in open market in New Orleans.

That it is necessary to place the machinery in the sugar-house in condition to go through the long season of inactivity; that there remains a part of the crop of sugar to be made, and for this purpose it is necessary to buy about five hundred barrels of coal.

The premises considered, they pray that they be authorized to sell the crop in open market in New Orleans; that they be authorized to work and cultivate the plantation, build the public road, repair and rebuild the front fences, purchase the coal necessary to finish working up the present crop, and to put the plantation machinery, both at sugar-house and the pump in front, in proper order.

Petitioners pray for all and general relief, &c.

(Signed) BEATTIE & BEATTIE, *Attorneys.*

Considering the within petition, the provisions of the will on file and probated and ordered to be executed, and the evidence adduced, and the law in such cases made and provided, it is ordered that the executrix and the executors be, and they are hereby, authorized to carry on and work the plantation, to cultivate the proper crops of cane and corn, to make the necessary public road on the front of the plantation, and to repair and rebuild the front fences, to buy coal to finish the present crop, and to put in proper order
100 the machinery on the plantation, and to ship to and sell in New Orleans in open market the crop of sugar and molasses made on the plantation.

Done and signed in chambers this 24th day of January, 1895.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Filed Jan'y 24th, 1895.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

Petition and Provisional Account of Executors.

To the honorable the eighteenth judicial district court in and for the parish of Lafourche:

The petition of Bettie Allen and of William F. Collins, all residents of this parish and herein appearing as the executrix and executor of the last will and testament of Richard H. Allen, respectfully represents:

That they present herewith a provisional account of their administration of the said succession.

By this account they account for the whole of the said estate save and except the crop of sugar made on the Rienzi plantation during the year 1894. They propose to account for that so soon as it is made into sugar, shipped, and sold.

By this account it is shown that the plantation and assets for which petitioners are accountable amounts to seventy-five thousand five hundred and sixty-two dollars; of this amount the coal inventoried and a part of the corn and hay have been used up on the plantation.

This plantation, as it stands, as soon as the crop is taken off, your petitioners propose to turn over to the legatees thereof under the will—that is to say, they propose to turn it over to Mrs. Bettie Allen for one-half. The other half they propose to place in the hands and possession of R. H. Allen, Jr., for his family's use, one-ninth thereof; Thomas H. Allen, for his wife and children, one-ninth thereof; Harry H. Allen, for his wife and children, one-ninth thereof; Mary Louis, wife of J. C. Latham, of New York, one-ninth thereof; Gaston Smith, one-ninth thereof; Fred W. Smith,
101 one-ninth thereof; Mrs. Nellie Houchens, one-ninth thereof; Ogden Smith, one-ninth thereof; Thomas A. Smith, one-ninth thereof.

The said parties to repay to the estate the cost of carrying on the plantation from January 8th, 1895. The household furniture, which was inventoried at eighteen hundred and ninety-eight dollars, they

propose to turn over to Mrs. Bettie Allen. The gold watch left by the will to R. H. Allen, the son of T. H. Allen, Jr., of Memphis, Tennessee, by putting it in the hands of his father. They propose to pay the debts and charges due amounting, as per detailed account filed, to the sum of thirty-five thousand and eighty-one and $\frac{72}{100}$ dollars.

Petitioners further show that they do not hold themselves accountable for the amount of two thousand three hundred and fifty pounds sterling in the hands of Baring Bros. & Co., Lim., for the reason that the same was not the property of the deceased, but that of his wife, Mrs. Bettie Allen, and they are advised that they have no right thereto.

They also show that they do not account for nor do they hold themselves accountable for the sum of four thousand dollars in bonds of four per cent. of the city of New Orleans, for the reason that the said bonds were and are registered in the name of Mrs. Bettie Allen and are her property, and are not and never were the property of the deceased. Petitioners aver that both of these sums are the dotal or paraphernal property of Mrs. Allen, and that the estate of her late husband has no right therein.

Petitioners are unable to say exactly what is to be done with the bequest of a good English education to the two sons of Mrs. Cragin. For the present they propose to pay to Mrs. Cragin an amount sufficient to put the boys at school up to the 1st of July, 1896.

So soon as determination of the various questions arising out of diverse interpretations of the will are settled by a final decree they will propose a settlement of this matter.

As will be seen, petitioners propose to pay over to Mrs. T. H. Allen, of Memphis, Tennessee, the sum of money due by T. H.
102 Allen & Co. of that city to the deceased. As petitioners state in the note to their account, they have not found the notes spoken of. They recognize this as a special legacy of these notes and of nothing else.

The amounts reserved for future costs and expenses is large, for the reason that a large sum must be held to keep and preserve the estate until the various questions arising out of the various interpretations of the will are finally determined; and besides this the questions about the legacy of an education to the sons of Mrs. Cragin may demand a large sum.

The inability of the executors to agree is also a cause of this. This inability arises from a different construction being given the will by the other executor.

Petitioners aver that they have been served with writs of attachment in certain suits on the docket of this court entitled and numbered Hunsden Carey *vs.* T. H. Allen, No. 3065; in the case of Mrs. Nellie Houchens *vs.* T. H. Allen & *a's.*, No. 3066, and in the case of Louisiana National Bank *vs.* T. H. Allen, No. 3067, by which all of the rights, titles, and interests of T. H. Allen, Sr.; T. H. Allen, Jr., and R. H. Allen, Jr., have been seized and attached in petitioners' hands. Petitioners aver that whatever amount this court may order paid to any of these parties must be paid to the said

attaching creditors, and petitioners pray that in these matters they be protected.

Petitioners aver that in the account which is filed herewith they have fully stated all matters connected with this account which require explanation, and the said account they specially make a part hereof.

Petitioners when they pay over any amount to F. W. Smith, Jr., will demand from him out of the same the amount of the capital of his note, of which a statement is made in the account of active titles.

Petitioners desire to say that in the books of the late R. H. Allen there appear various accounts against various parties named in his will; that petitioners believe and are advised that the same are not chargeable against the special legacies left to these persons.

103 Should, however, these persons be at any time recognized as heirs and as such entitled to any part of this estate, then petitioners reserve the right to have such sums charged up against whatever amounts may be distributed to any of these people.

The premises considered, petitioners pray that due notice of this account be given and published in accordance with law; that the heirs resident in this parish, viz., T. A. Smith, Ogden Smith, and Mrs. Nellie Houchens, and the attorney of absent heirs, John S. Billiu, Esq., be cited to answer hereto; that after due delay and due proceedings that the account be homologated and approved and made the judgment of this court, and petitioners ordered to and directed to make the payments proposed, and for all and general relief, &c.

(Signed) BEATTIE & BEATTIE, *Attorneys.*

STATE OF LOUISIANA, }
Parish of Lafourche. }

Eighteenth District Court.

Succession of RICHARD H. ALLEN. No. 1417, Probates.

Provisional Account of the Executors and Executrix of the Above Entitled and Numbered Succession.

Assets to be accounted for in this account.

Plantation and Appurtenances.

Land	$55,000.00
Mules	8,250.00
Wagons and carts	2,150.00
Agricultural implements	534.00
Corn	4,000.00
Hay	700.00
Coal	4,620.00
Lot of lumber and iron	308.00
	$75,562.00

Household Furniture, Cattle, Horses, Carriages, &c.

	One horse	$125.00
104	Two carriages	$150.00
	One buggy	30.00
	Twenty-one head of horned cattle	168.00
	One lot of hogs	100.00
	One lot of furniture	75.00
	Five bed-room sets	460.00
	One set dining-room furniture and tableware	125.00
	One lot of furniture in lower hall	40.00
	One parlor set	350.00
	One lot of furniture in hall upstairs	50.00
	One lot of furniture in office, with iron safe	75.00
	One lot of bed and table linen	150.00
		$1,898.00

Active Titles.

One note of John B. Turner	$300.00
One note of F. W. Smith, Jr.	501.00
Claim of deceased against T. H. Allen and T. H. Allen & Co., of Memphis, Tennessee	17,369.00
	$18,170.00

Cash in Hands of Banks and Bankers.

In New Orleans Canal and Banking Co.	$2,946.07
In Louisiana national bank	18,000.92
In Whitney national bank	9,189.58
In hands of Latham, Alexander & Co., of New York	545.64
	$30,682.21

Cash at Residence.

One lot of gold coin and currency and silver	$2,628.06
Cash proceeds of one barrel of sugar and one pig sold before death of Mr. Allen, but collected afterwards	17.45
	$2,645.51
Cash proceeds of 243 barrels of sugar inventoried and sold in open market in New Orleans	2,255.00
One gold watch	100.00

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Recapitulation.

Plantation	$75,562.00
Household furniture, &c.	1,898.00
Active titles	18,170.00
Cash in banks	30,682.21
Cash at residence	2,645.51
Cash for sugar sold and inventoried	2,255.00
One gold watch	100.00
Grand total	$131,312.72

Debts and Legacies which are to be Now Paid.

1.	J. & B. Solari	3.50
2.	Thibodaux drug store	175.95
3.	Dr. H. Dansereau	450.00
4.	L. J. Souer	15.00
5.	Puech & Freret	73.00
6.	D. H. Holmes	64.71
7.	W. H. Ragan	10.25
8.	A. J. Clement	55.35
9.	P. H. Hogan	26.00
10.	A. Molaison	34.30
11.	J. L. Aucoin	51.85
12.	Roth Drug Co.	56.75
13.	R. R. McBride	14.35
14.	F. Johnson & Son Co., Lim	353.53
15.	Times Democrat	1.50
16.	L. Keefe	469.72
17.	Frank Hoffman	50.50
18.	W. F. Collins	356.95
19.	Southern Pacific R. R. Co.	8.59
20.	F. Hoffmann	90.85
21.	J. W. Knobloch, deputy clerk, costs	56.20
22.	James Beary, sheriff	1.30
106		
23.	Barber for shaving the dead	5.00
24.	Rev. Philson, funeral services	25.00
25.	Cooperage	44.10
26.	Funeral notices and stamps	2.75
27.	Paid servants for September	99.50
28.	Stauffer, Eshleman & Co.	296.11
29.	Bourg & Bergeron	27.05
30.	Standard Oil Co	109.07
31.	Pay-roll of plantation to date of death	896.45
32.	C. J. Barker, for inventory	35.00
33.	Notary and appraisers in New Orleans	18.00
34.	Amount due T. A. Smith	500.41
35.	Amount due Louis Juilliat	166.00
36.	Amount due Ogden Smith for services as manager	123.33
37.	Amount due C. Flexlauer	450.67
38.	Commissions of executors and executrix on the amount herein accounted for	3,282.82
39.	Legacy to Mrs. Bettie De Berry	500.00
40.	Legacy to Mrs. Ellen B. Baker	500.00
41.	Legacy to Mrs. Jennie Boyle	500.00
42.	Legacy to Mrs. Sallie Cragin	500.00
43.	Legacy to Walter Collins	200.00
44.	Legacy to Lizzie Harrison	150.00
45.	Legacy to Mat Dickerson	150.00

46. Legacy to John B. Turner, to be paid by delivering to him his note accounted for under head of active titles..... 300.00

47. Legacy to Mrs. Thomas H. Allen, to be paid by delivering to her the claims or notes owned by the deceased against Thomas H. Allen & Co., of Memphis, Tennessee..... 17,369.00

NOTE.—This is the amount stated in the will as due the deceased by Thomas H. Allen & Co., and is to be paid by the terms of the will by delivering to her the evidences of the said debt or by paying to her whatever amount may be collected thereon by the executors of the last will of the deceased. A suit has been filed in this court by one Hunsden Carey, claiming to be the transferree of this right of legacy. He states his residence to be at Memphis, Tennessee. If this transfer is established he will be entitled to receive the amount paid under this legacy. The executors claim that, in any event, they cannot be held to pay anything under this particular legacy, save so much as may be received from this special source.

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$28,670.40

They also note here that they are not in possession of the evidence or title to this debt. No such notes or obligations have been found among the papers of the deceased. They should be here, but are not.

48. Amount proposed to be paid to Mrs. Sallie Cragin for the tuition of her son George for the scholastic year from September, 1894, to July, 1895..... 18.00

49. Amount proposed to be paid to Mrs. Sallie Cragin for the tuition of her sons George and Allen for the scholastic year from September, 1895, to July, 1896..... 45.00

50. Amount State and other taxes..... 1,348.31

51. Attorneys' fees for opening the estate, probating the will, advice and counsel to executors to date, for filing this account and homologating the same, and for future services, will be settled on final account.

52. Amount proposed to be distributed to Mrs. Bettie Allen from the cash assets left by the deceased under the provisions leaving her "all my corporal movables, &c."..... 5,000.00

53. Amount reserved for costs and contingencies to keep together this large estate and preserve the same should this account be not at once homologated and for the education of the minors Cragin..... 18,170.00

Total..... 53,251.72

The executors propose to account for the crop of 1894 as soon as the same is sold. That amount is not accounted for here.

(Signed) MRS. BETTIE ALLEN.
W. F. COLLINS.

(Signed) BEATTIE & BEATTIE,
Attorneys of Accountants.

108 Considering the within petition and annexed provisional account of the executors of the late R. H. Allen, let the said provisional account be filed and let due notice be given of the said filing of said provisional account by the requisite publication in one of the local papers of the parish of Lafourche, in accordance with law.

Done and signed in chambers at Thibodaux, La., this 24th day of January, A. D. 1895.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Filed January 24th, 1895.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

Petition Accompanying Final Account of Ogden Smith, Co-executor.

THE STATE OF LOUISIANA, }
Parish of Lafourche. }

Eighteenth Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417, Probates.

To the honorable the eighteenth judicial district court of the State of Louisiana, sitting in and for the parish of Lafourche:

The petition of Ogden Smith, of the parish of Lafourche, one of the executors of the last will and testament of Richard H. Allen, deceased, whose succession is opened in this honorable court, respectfully represents:

That by the last will and testament of said Richard H. Allen the said testator appointed the following executors, viz., Mrs. Bettie Allen, William F. Collins, and your petitioner.

That all three of said executors have qualified and letters as such have issued to them.

That the estate of deceased owes but few debts and cash legacies of comparatively small amounts, and that there is cash on hand to pay all debts and cash legacies, and the estate is in a condition to be turned over to the particular legatees and heirs.

109 That your petitioner disagreed with his co-executors in several particulars, and that he therefore files a final account in which his co-executors do not concur.

That his co-executors have filed a provisional account, in which your petitioner does not concur, and which he hereby opposes in every particular and item by item, save and except where said provisional account and the items therein and the distributions of funds agree with the final account herewith filed by petitioner.

That the main disagreement between petitioner and his co-executors is:

1. That his co-executors insisted on filing a provisional account, whereas your petitioner insists on filing a final account terminating the administration of the estate, thus saving costs and expenses and turning over the assets to the legatees and heirs, as fully set forth in your petitioner's final account.

2. That your petitioner's co-executors insist that Mrs. Bettie Allen is under the terms of the will entitled to all the cash money left by deceased, whereas your petitioner insists that under the plain terms of the will all the cash money, save the amount in the hands of Barring Bros., bequeathed to Mrs. Bettie Allen was never willed or disposed of by the will and belongs to the legal heirs who were not cut off by the will, subject, however, to the payment of cash legacies, debts, taxes, and privileged charges.

3. That the crop on the Rienzi plantation at the time of the death of testator was part of the realty bequeathed and belongs to the legatees named in the will, to whom the realty is bequeathed, and this is your petitioner's construction of the will, whereas the co-executors claim that said crop belong- exclusively to Mrs. Bettie Allen.

4. That the legacy to the children of Mrs. George D. Cragin is too indefinite in amount and as to duration to be established with legal certainty or precision. This is the view held by petitioner, although he very much regrets that the wishes of the testator in this particular cannot be carried out. Your petitioner's co-executors insist that this wish can be carried out, and they propose to pay out funds for an indefinite period, and the amount of funds thus to be paid out is not fixed according to any safe or reliable standard.

Wherefore petitioner prays that due public notice and advertisement be given of the filing of this account; that his co-executors and all legal heirs and legatees residing in the parish of Lafourche be duly notified of the filing of said final account, and that after due course of law the provisional account filed by his co-executors be set aside *in toto*, and that the final account filed by petitioner be approved and homologated, and that the funds and assets be distributed in accordance therewith.

(Signed) CLAY KNOBLOCH & SON,
Att'ys — Pet'r.

Let due public notice and advertisement be given according to law of the filing of the final account of Ogden Smith, co-executor of the last will and testament of R. H. Allen, and let all parties in interest residing in the parish of Lafourche, who are either heirs or legatees, be duly notified of the filing of said account.

Granted at chambers this 5th day of February, 1895.

(Signed) L. P. CAILLOUET,
Judge 18th Jud. Dist.

Filed Feb'y 5th, 1895.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

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Final Account of Ogden Smith, Co-executor.

Eighteenth Judicial District Court, Parish of Lafourche.

Succession of RICHARD H. ALLEN. No. 1417, Probates.

Final account of Ogden Smith, one of the executors of the last will and testament of Richard H. Allen, deceased.

I. *Assets—Plantation and Crop.*

1.	Rienzi plantation, appraised, as per inventory, at....	$55,000.
111	The growing crop thereon, appraised at..... This growing crop has been converted into sugar and molasses, and formed part of the realty at the time of the death of R. H. Allen.	38,000.
2.	91 mules, appraised at.....	8,250.00
3.	19 4-mule wagons, 4 three-mule carts, and 6 single carts, appraised at.....	2,150.
4.	A lot of agricultural implements, appraised at.....	534.00
5 and 6.	Corn and pea vines were consumed to feed live stock and coal used to take off the crop; so, too, as to lumber and iron.	
	Total.....	$103,934.00

Accountant proposes to turn over all this property to the legatees, viz: (1) To Mrs. Bettie Allen, one-half thereof; (2) to the families of testator's brother, Thomas H. Allen, viz., R. H. Allen, Jr., for his family's use; Thomas H. Allen, Jr., for his wife and children; Harry Allen, for his wife and children; Mrs. Mary Louis, wife of J. C. Latham, and to the five children of testator's sister, Cynthia A. Smith, deceased, wife of F. W. Smith, viz., Gaston Smith, Fred. W. Smith, Jr., Mrs Nellie Houchens, Ogden Smith, and Thomas A. Smith, to each the undivided one-ninth to the undivided one-half.

So far as the sugar and molasses are concerned, same are being now sold on the open market under orders of this honorable court. Accountant proposes that the net proceeds thereof be turned over to the parties just named in the proportions just mentioned: *Provided*, That the legatees shall reimburse to the estate the expenses incurred to make and save said crop since the death of the testator, as per statement "A," herewith filed, amounting to nineteen thousand seven hundred and thirty $\frac{26}{100}$ dollars, $19,730.26.

II. *Assets—Cash.*

1.	Deposit in La. national bank.....	$18,000.92
2.	Deposit in N. O. Canal & Banking Co....	2,946.07
3.	Deposited in Whitney national bank....	7,130.13
4.	Deposited in Whitney national bank....	2,059.45
5.	Deposited with Latham, Alexander & Co.....	545.64

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6. Gold coin, currency, and silver	2,628.06
7. Cash collected on barrel of sugar and hog	17.45
8. Cash collected on 243 barrels of sugar sold	2,255.00
Total cash assets	$35,582.72

This cash, being unwilled, must go first to the payment of particular legacies, to taxes, debts, and privileged claims, and the remainder to be divided according to law among the legal heirs who have not been disinherited by the will.

The debts, taxes, particular legacies, and privileged charges are as follows:

—. J. & B. Solari	3.50
2. Thibodaux drug store	175.95
3. Dr. H. Dangereau	450.00
4. L. J. Souer	15.00
5. Peusch & Frerret	73.00
6. D. H. Holmes	64.71
7. W. H. Ragan	10.25
8. A. J. Clement	55.35
9. P. H. Hogan	26.00
10. A. Molaison	34.30
11. J. L. Aucoin	51.85
12. Roth Drug Co.	56.75
13. R. R. McBride	14.35
14. F. Johnson & Son Co., Ltd.	353.53
15. Times-Democrat	1.50
16. L. Keefe	469.72
17. Frank Hoffmann	50.50
18. W. F. Collins	356.95
19. Southern Pacific R. R. Co.	8.59
20. F. Hoffman	90.85
21. J. W. Knobloch, deputy clerk, costs	56.20
22. James Beary, sheriff	1.30
23. Barber, for shaving the dead	5.00
24. Rev. Philson, funeral services	25.00
25. Cooperage	44.10

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26. Funeral notices and stamps	2.75
27. Paid servants for September	99.50
28. Stauffer, Eshleman & Co.	296.11
29. Bourg & Bergeron	27.05
30. Standard Oil Co.	109.07
31. Pay-roll of plantation to date of death	896.45
32. C. J. Barker, for inventory	35.00
33. Notary and appraisers in New Orleans	18.00
34. Amount due T. A. Smith	500.41
35. Amount due Louis Juilliat	166.00

36. Amount due Ogden Smith for services as manager.	123.38
37. Amount due C. Flexlauer.....	450.67
38. Mrs. Bettie Allen and accountant, being legatees, are not entitled to commissions. Their co-executor, Willie Collins, is entitled to one-third of the commissions, say	1,094.27
39. Legacy to Mrs. Bettie De Berry.....	500.00
40. Legacy to Mrs. Ellen B. Baker..	500.00
41. Legacy to Mrs. Jennie Boyle...	500.00
42. Legacy to Mrs. Sallie Cragin.....	500.00
43. Legacy to Walter Collins...	200.00
44. Legacy to Lizzie Harrison.....	150.00
45. Legacy to Mat. Dickerson.....	150.00
46. Legacy to John B. Turner is to be paid by delivering to him his note of.....	300.
47. Legacy to Mrs. Thomas H. Allen to be paid to her by surrendering to her the claim of testator against Thomas H. Allen & Co.	
48. Accountant does not propose to pay anything to Mrs. Sallie Cragin for tuition of her sons George and Allen, because the legacies to said minors to give them an English education is indefinite and cannot be established with precision or certainty.	
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49. Amount State and parish taxes....	1,348.31
50. Beattie & Beattie, attorneys' fees for final settlement.	4,000.00
51. Clay Knobloch & Son, attorneys' fees.....	2,000.00
52. John S. Billiu, attorney absent heirs..... ..	500.00
Total liabilities.....	$16,661.17
Balance for distribution.....	18,921.55
Equal to total cash assets....	$35,582.72
Balance for distribution...	$18,921.55
Add F. W. Smith's note, put down as cash.....	500.00
Total cash for distribution	$19,421.55
Less reserve for future costs.....	221.55
Net balance for distribution.....	$19,200.00

This amount must be divided among the legal heirs of deceased who have not been cut off by the will, viz:

1. To testator's brother, Thos. H. Allen, or his assignees, one-third of $19,421.55, say..	$6,400.00	
2. To the two children of his deceased sister, Myra Allen Turner, viz:		
1. Wm. A. Turner, ½ of ⅓.....	3,200.00	
2. John B. Turner, same.....	3,200.00	

3. To the five children of his deceased sister, Cynthia Allen Smith, viz:		
1. Gaston Smith, $\frac{1}{5}$ of $\frac{1}{3}$.	1,280.00	
2. Fred W. Smith, Jr., same. In paying him, however, he must take his note of $500 as so much cash.....	1,280.00	
3. Mrs. Wid. Nellie Houchens, same.....	1,280.00	
4. Ogden Smith, same.....	1,280.00	
5. Thomas A. Smith.....	1,280.00	
Equal to net balance...	$19,200.00	$19,200.00

III. *Assets—Household Furniture.*

Household furniture, &c.—As per provisional account of the co-executors, these articles and things, including bed linen, tableware, &c., are inventoried at $1,890.00.

Accountant proposes to turn over these articles and things in kind to the particular legatee, Mrs. Bettie Allen.

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IV.

Gold Watch.

The gold watch inventoried at $100.00 accountant proposes to turn over to the particular legatee, Richard H. Allen, Jr.

V.

Assets.

Claim against T. H. Allen & Co. amounting to about $17,369.—Accountant says he has no written evidence of that claim and proposes to turn it over under the terms of the will to the wife of Thomas H. Allen or her assigns.

VI.

Claim against the U. S. Government.

This claim, amounting to about $100,000 00, accountant proposes to turn over under the terms of the will:

1. To the four children of Thomas H. Allen, viz., R. H. Allen, Jr., for his family; Thomas H. Allen, Jr., for his wife and children; Harry Allen, for his wife and children, and Mrs. Mary Louis, wife of J. C. Latham, four-ninths of said claim.

2. To the five children of Mrs. Cynthia Allen Smith, viz., Fred W. Smith, Jr., Gaston Smith, Mrs. Nellie Houchens, Ogden Smith, and Thomas A. Smith, the remaining five ninths of said claim.

VII.

Assets.

Cash in hand of Berring Bros. and city of New Orleans bonds:

These two items accountant proposes to turn over to Mrs. Bettie Allen as particular legatee under the will.

VIII.

Assets.

Note of Theodore Lasseigne and Elphege Boudreaux:

These two parties were tenants on the Rienzi plantation and had borrowed the amount to make their crop. They have reimbursed the amount by turning over the crop to the plantation.

Thibodaux, La., February 4th, 1895.

(Signed) OGDEN SMITH, *Co executor.*
" CLAY KNOBLOCH & SON,
Attorneys of Ogden Smith, Co executor.

116 Filed Feb'y 5th, 1895.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Notice to Newspaper of the Filing of the Final Account by Ogden Smith, Executor.

THE STATE OF LOUISIANA:

Eighteenth Judicial District Court, Parish of Lafourche.

Succession of RICHARD H. ALLEN. No. 1417, Probates.

Whereas Ogden Smith, executor of the last will and testament of the said Richard H. Allen, of the parish of Lafourche, has filed a final account of his administration of the aforesaid estate:

Now, therefore, all persons are hereby warned and notified to file their oppositions in writing to the said account with the clerk of said court, at his office, in the town of Thibodaux, ten days after the first publication hereof; otherwise the said account will be approved and homologated in accordance with law.

[L. S.] Witness my hand and the impress of the seal of my office this the 5th day of February, A. D. 1895.

(Signed) J. W. KNOBLOCH,
D'y Clerk of said Court.

Filed Feb'y 5th, 1895.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Petition and Opposition of R. H. Allen, Jr., Thomas H. Allen, Jr., Harry Allen, and Mrs. J. C. Latham.

18th Judicial District Court, Parish of Lafourche.

Succession of RICHARD H. ALLEN. No. 1417, Probates.

The petition and opposition of R. H. Allen, Jr., herein appearing as trustee for his wife and children; of Thos. H. Allen, Jr., appearing as trustee for his wife and children; of Harry Allen, appearing as trustee for his wife and children, and of Mrs. Mary Louise, wife of C. Latham, herein authorized and assisted by her said
117 husband, respectfully shows:

That they oppose the following parts and items of the petition and provisional account herein filed by the executor, viz:

They oppose that portion of said account which recognizes them as owners of only one-ninth each of one-half of Rienzi plantation. Petitioners claim that under a proper interpretation of the will of Richard H. Allen, deceased, they are the legatees of one-fourth each of the one-half of said plantation, or that if the five children of Cynthia Smith are included at all as beneficiaries of said joint legacy (which petitioners deny), then petitioners claim that the said five children take only as a class, and are entitled only to one-fifth of said legacy, and that, in such event, that your petitioners are legatees of said one-half of said plantation in the proportion of one-fifth each.

Wherefore opponents pray that this opposition may be maintained, and that the account be amended as herein suggested.

(Signed) FENNER, HENDERSON & FENNER,
THOMAS A. BADEAUX, *Attorneys.*

Filed February 4th, 1895.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

Petition and Opposition of Thomas H. Allen.

18th Judicial District Court for the Parish of Lafourche.

Succession of RICHARD H. ALLEN. No. 1417, Probates.

The petition and opposition of Thomas H. Allen, of Memphis, Tenn., respectfully shows:

That he is a brother of the late Richard H. Allen and one of his heirs-at-law, and as such is entitled to his share of the estate of said Richard H. Allen, deceased, not disposed of by his last will.

Petitioner opposes the following items in the petition and provisional account herein filed by the executors:

118 1. Petitioner opposes the item 52 of the account which proposes to pay to Mrs. Bettie Allen the sum of $5,000.00 out of the cash left by the deceased and any portion of the petition and account which proposes to recognize Mrs. Bettie Allen as the legatee of the following items included in the active mass of the succession and stated in the recapitulation thereof as follows, viz:

Cash in banks	$30,682.21
Cash at residence	2,645.51
Cash for sugar sold	2,255.

Petitioner claims that said assets as left by the decedent were not bequeathed to Mrs. Bettie Allen under the term- of the will of R. H. Allen, and were not otherwise disposed of, and that they accrue and belong to the legal heirs of said R. H. Allen, including your petitioner.

2. Petitioner opposes items 39, 40, and 41 of the debts and legacies recognized in said account, viz., $500 each to Mrs. Bettie De Berry, Mrs. Ellen B. Baker, and Mrs. Jennie Boyle, and petitioner claims that under the terms of the will the said three parties are entitled together to only five hundred dollars, making this opposition, how-

ever, only for the purpose of bringing before the court the proper interpretation of that clause of the will.

3. Petitioner opposes all the items of debts to be paid as enumerated in said account, and requires full proof thereof.

4th. Petitioner opposes the appropriation of any part of said unbequeathed assets to the payment of any expenses incurred in the administration of Rienzi plantation unless full provision be made for the reimbursement thereof to the legal heirs.

Wherefore opponent prays that this opposition may be maintained, and that the account be amended as hereinabove suggested and set forth.

(Signed) FENNER, HENDERSON & FENNER,
THOMAS A. BADEAUX, *Attorneys.*

Filed February 4th, 1895.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

119 *Petition and Opposition of J. B. and W. A. Turner to the Provisional Account.*

18th Judicial District Court for the Parish of Lafourche.

Succession of RICHARD H. ALLEN. No. 1117.

To the honorable the judge of the eighteenth judicial district court for the parish of Lafourche:

The joint petition and opposition of John B. Turner, residing and domiciliated at Groveton, Trinity county, State of Texas, and of William A. Turner, residing and domiciliated at Huntsville county, State of Texas, to the provisional account presented and filed by Mrs. Bettie Allen, executrix, and by W. F. Collins, one of the executors of the above entitled and numbered succession, respectfully represent:

That they are the nephews of the late Richard H. Allen and as such coheirs-at-law of his estate and succession opened and under administration in this honorable court by representation of their predeceased mother, Mrs. Myra Turner, *née* Allen, late sister of the deceased.

That as such coheirs they are entitled under the law to inherit to the extent of one-fifth ($\frac{1}{5}$) jointly of his whole estate and succession, the said late Richard H. Allen having left no children or descendants, surviving parents, or other forced heirs, and being separate in property by marriage contract from his surviving wife, according to the provisions of their said contract, executed on June 23rd, 1858, before H. B. Cenas, notary public for the city of New Orleans, and in the absence of any testamentary dispositions to the contrary.

That the said late Richard H. Allen did make an olographic testament, which has been admitted to probate by this honorable court and its registry and execution ordered.

That under the terms of the said last will and olographic testa-

ment petitioners and opponents have been recognized as coheirs of the deceased, to one of whom, John B. Turner, a particular
120 legacy was made of his own note for three hundred dollars, deducting interest held by the deceased.

That under the terms of the said last will and testament certain particular money legacies were bequeathed to three nieces of said testator, viz., to Mrs. Jennie Boyle and to Mrs. Bettie De Berry and Mrs. Ellen B. Baker, of five hundred dollars cash to each of them, additional to five hundred dollars heretofore given to each of them by him, with the express declaration made by said testator in his said olographic testament that "they have no interest in any other claim."

That but for said express declaration and exclusion on the part of the testator in his said last will the said Mrs. Jennie Boyle, *née* Looney, wife of J. M. Boyle, residing and domiciliated at the city of St. Louis, State of Missouri, niece of the deceased, would otherwise have inherited as heir-at-law of the deceased, by representation of her predeceased mother, Mrs. Rose Ann Looney, *née* Allen, late sister of the deceased, and as sole child and heir of her said predeceased mother, to the extent of one-fifth undivided of whatever portion of the estate and succession which was not disposed of or bequeathed under the terms of the last will and testament of the deceased.

And that but for that express declaration and exclusion on the part of the testator in his said last will the said Mrs. Bettie De Berry, *née* De Loach, wife of A. W. De Berry, residing and domiciliated at Aransas Pass, State of Texas, and also Mrs. Ellen B. Baker *née* De Loach, divorced wife of Charles Baker, residing and domiciliated at the town of Fort Worth, State of Texas, nieces of the deceased, would otherwise have inherited as heirs-at-law of the deceased, by representation of their predeceased mother, Mrs. Harriet De Loach, *née* Allen, late sister of the deceased, and as sole children and heirs of their said predeceased mother, to the extent of one-fifth undivided of whatever portion of the estate and succession which was not disposed of or bequeathed under the terms of the last will and testament of the deceased.

121 Petitioners and opponents aver that by virtue of said exclusion of the said three nieces, particular legatees as aforesaid under the terms of the said last will of the deceased, the share of the undisposed portion of the estate which otherwise would have accrued to them *per stirpes*, by representation of their predeceased mothers, respectively, under the law of the State in such cases made and provided, has enured to the benefit of such of the heirs-at-law of the deceased who have not been so excluded.

That petitioners and opponents, by virtue of such exclusion of said above-named three nieces, are entitled to inherit the undisposed portion of the estate and succession of the deceased and not bequeathed by the will, and to divide the same and participate in a distribution thereof *per stirpes* to the extent of one-third undivided thereof to your petitioners and opponents jointly.

That under the terms of said last will and testament of the deceased, there being no residuary legatees or universal legatees,

the said undisposed portion of the estate accrues *per stirpes* to petitioners and opponents jointly, together with Thomas H. Allen, surviving brother of the deceased, and also with the five children and heirs of Mrs. Cynthia A. Smith, *née* Allen, late sister of the deceased, jointly together, for distribution by thirds undivided to each of said roots of heirs.

Now petitioners and opponents aver that there is a considerable portion of the estate which has not been disposed of or bequeathed by the testator, and which should be divided as above set forth among the heirs-at-law of the deceased entitled thereto and not excluded therefrom by the terms of the will.

That among such undisposed assets of the estate are the following, viz:

Cash in three banks in New Orleans and a bank in New York, total	$30,682.21
Cash at residence of the deceased, &c	2,645.51
Cash proceeds sale of 224 barrels sugar in New Orleans	2,255.00
Total cash	$35,582.72

122 As appears by the provisional account of the said executrix and executor of the succession on file, and also by the inventory of the succession.

That among other undisposed assets of the estate under the terms of the will are the following objects or movables, which are not immovables by destination or by the object to which they apply and which do not constitute part of the Rienzi plantation, viz:

Coal, of the value of	$4,620.00
Lot of lumber and iron, of the value of	308.00
Corn, " "	4,000.00
Hay, " "	700.00
Mules, or such of them not intended for cultivation	8,250.00
Total value	$17,878.00

As appears by the provisional account of said executrix and executor of the succession on file herein.

That the aggregate of the assets of the estate not bequeathed or disposed of by the terms of the will, on the valuation fixed thereon by said provisional account, is therefore $53,460.72 or thereabout.

Now, your petitioners and opponents aver that two of the executors of the succession have filed a provisional account, wherein they propose to pay to Mrs. Bettie Allen, widow of the testator, the sum of $5,000.00 from the said cash assets left by the deceased under the pretense that she is entitled thereto under a clause of the will giving her "all the corporeal movables" of the deceased, as appears by item No. 52 of said provisional account.

Petitioners and opponents oppose such proposed distribution of the said sum of $5,000 from said cash assets left by the deceased, and being in bank or at the residence of the deceased, as is thus proposed to be made to Mrs. Widow Bettie Allen, for the reason that

such distribution is contrary to the intention of the testator and is opposed to a proper and legal interpretation of that clause of said will, and that said will makes no such disposition, and for the further reason that the said Mrs. Widow Bettie Allen is only a particular legatee of the half of the Rienzi plantation and half of all tools,
123 mules, &c., or of the half of the proceeds thereof when sold by the executors, with all the property there belonging, and a particular legatee of all the corporeal movables, such as furniture, bedding, linen, silver plate, chinaware, &c., stock of cattle, horses, and carriages, in addition to four thousand dollars' worth of city of New Orleans bonds, 4 %, with coupons, and 2,359 pounds sterling in the hands of Baring Bros. & Co., Limited, more or less, and is not a residuary or universal legatee under the will.

Petitioners and opponents further oppose the reservation made by the executors under item No. 53 of said provisional account of the sum of eighteen thousand one hundred and seventy dollars ($18,170.00) to preserve and keep together this large estate and for the education of the minors Cragin, &c., &c., for the reason that the cash on hand which, under a legal, proper, and correct interpretation of the will, is not disposed of or bequeathed, but accrues to the heirs-at-law of the deceased *per stirpes*, and including petitioners and opponents, should not be used exclusively for the benefit of the Rienzi plantation and of the particular legatees to whom it was bequeathed, as is thus contemplated by said executrix and executor in their said provisional account.

Petitioners and opponents aver that as joint heirs-at-law of the deceased, and entitled as such to their proportion of the estate not disposed of or bequeathed under the will and as hereinabove fully set forth they oppose generally and specially the payment out of such funds of any of the expenses contingent upon the operating and cultivating of the Rienzi plantation subsequent to the death of the deceased, or of any of the debts of said plantation and of its legatees subsequent to the death of the deceased, or of any debts and charges and other expenses except such as existed at the time of the death of said late Richard H. Allen, on September 19th, 1894, or thereabout.

Petitioners and opponents oppose generally and specially all the items of indebtedness appearing on said provisional account from No. 1 to No. 51, inclusive, and require proof that said debts,
124 charges, or expenses existed at the time of the death of said late Richard H. Allen or prior thereto, in whole or in part, and for the further reason that they are excessive and not due, in whole or in part, and, if due in part, should be reduced to a proper allowance; and they oppose more particularly and specially items Nos. 2, 3, 5, 6, 14, 16, 18, 28, 30, 31, 34, 36, 35, 37 on said provisional account as excessive and not due, in whole or in part, and require strict proof thereof.

Petitioners and opponents further oppose specially item No. 38 of said provisional account, amounting to $3,282.82, which said executrix and executor allow themselves and their co-executor as commissions or fees of testamentary executors, and based at 2½ per

cent. on the total amount or value of the assets specified in said provisional account and aggregating $131,312.72, and petitioners and opponents aver that such fees or commissions are not due and owing by the estate and succession of the deceased to the said three executors for the reason that no seizin of the estate was given them under the will, and because two of such executors are legatees and therefore not entitled to commissions, and that the third executor is only entitled to ⅓ of 2½ % (one-third of two and a half per cent.) on the amounts actually reduced to possession, excluding bad debts. Petitioners and opponents aver that such fees or commissions as may be due to the third executor can only be charged upon the final account when presented, and should be reduced to such amounts as actually were reduced to possession, as shown by the evidence, and petitioners and opponents aver that said item No. 38 on said provisional account is illegal and irregular, and they oppose payment thereof and ask that it be stricken out of said account.

Petitioners and opponents further oppose said provisional account on the credit side thereof because it fails to include as forming part of said estate several valuable assets, and more particularly the fruits gathered and the crops made and cut on the Rienzi plantation, if any such there be, at the time of the death of the late Richard H. Allen, and such other products on said plantation which were not immovables by destination or by the object to which they
125 apply at the time of the death of the said Richard H. Allen; and, further, because it fails to include as forming part of said estate the sum of 2,350 pounds sterling in the hands of Baring Bros. & Co., Limited, and also the four thousand dollars' worth of New Orleans 4 % bonds, with coupons, both mentioned in the testator's will as belonging to him, and which petitioners and opponents aver should be considered and treated as part of his estate and succession until proof to the contrary be administered in court, if such there be, and judgment be rendered accordingly.

Petitioners and opponents object to the payment of the legacy to Mrs. Thomas H. Allen of the sum of $17,369 (seventeen thousand three hundred and sixty-nine dollars) from the mass of the estate, and aver that said legacy should be acquitted by the delivery to said Mrs. Thomas H. Allen of the notes, claims, or other evidences of the indebtedness of said Thomas H. Allen or Thomas H. Allen & Co. held and owned by the late Richard H. Allen, and not otherwise.

Petitioners and opponents object to item No. 50 of said provisional account, in so far as it pretends to charge the whole estate with the payment of State and other taxes, amounting to $1,348.31, bearing on the Rienzi plantation, except for the proportion of said taxes which were due at the time of the death of the said late Richard H. Allen.

Petitioners and opponents further oppose said provisional account on the credit side thereof, because it is not a tableau of distribution such as the law contemplates, but a mere statement of debts and assets unsold and unrealized, comprising real estate, mules, wagons, corn, hay, coal, lumber, and iron, &c., &c., some of which assets

have not been specially bequeathed and should have been sold and realized into cash for the purpose of payment to and distribution among the creditors, legatees, and heirs of the deceased; and petitioners and opponents aver that said executors should proceed to sell the said coal, lumber, and iron, hay, corn, mules, &c., belonging to the succession of deceased in order to realize funds wherewith to pay and satisfy the debts and legacies and for distri-
126 bution among the creditors, legatees, and heirs of the deceased; and petitioners and opponents object to the coal, hay, corn, &c., herein inventoried being used on the Rienzi plantation for the benefit of said plantation and of the legatees thereof since the death of the said late Richard H. Allen, and aver that if such coal, hay, and corn were used on said plantation the executors should account therefor and charge the said plantation and its legatees jointly for the value thereof accordingly; and petitioners and opponents object to the estate being charged with the costs of carrying on the plantation up to January 8th, 1895, as contemplated by the executors in their petition filed with their provisional account herein.

Wherefore petitioners and opponents pray that these oppositions be sustained; that the provisional account of the two executors be amended accordingly, and all the items hereinabove set forth disallowed and rejected or reduced to such an amount as may be established by the evidence; that the executors be ordered to recast and file their final account and to account for such of the items of the active mass which were not accounted for in the present account, and especially the coal, hay, corn, &c., belonging to the succession, which should be sold for the benefit of the whole estate and of its creditors, legatees, and heirs; that the cash in bank and at the residence and all other assets not disposed of or bequeathed under the will be decreed to belong to the heirs-at-law of the deceased not specially excluded by the will, *per stirpes*, and that petitioners and opponents be accordingly recognized as heirs-at-law of the deceased, and as such owners thereof jointly for $\frac{1}{3}$ (one third) in indivision with T. H. Allen, brother of the deceased, for his third, and with the five children and heirs of Mrs. Cynthia A. Smith, predeceased sister of the deceased, for their third jointly thereof, without prejudice to the rights of petitioners and opponents to claim and obtain a similar distribution to be hereafter made of any and all property not herein accounted for and not disposed of under the will, and of any and all property which may hereafter be found to belong to this estate or which may be recovered for the estate and reduced
127 to possession by the executors, and for all costs of these proceedings, and for all further aid and relief needful in the premises.

(Signed) HENRY CHIAPELLA,
Attorney for J. B. and W. A. Turner,
Petitioners and Opponents.

Filed February 4th, 1895.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Petition and Opposition of Thomas H. Allen.

18th Judicial District Court for the Parish of Lafourche.

Succession of RICHARD H. ALLEN. No. 1417, Probates.

The petition and opposition of Thomas H. Allen, of Memphis, Tenn., respectfully shows:

That he is a brother of the late Richard H. Allen and one of his heirs-at-law, and as such is entitled to his shares of the estate of said Richard H. Allen, deceased, not disposed of by his last will.

Petitioner opposes the following items in the petition and provisional account herein filed by the executors:

1. Petitioner opposes the item 52 of the account, which proposes to pay to Mrs. Bettie Allen the sum of $5,000.00 out of the cash left by the deceased, and any portion of the petition and account which proposes to recognize Mrs. Bettie Allen as the legatee of the following items included in the active mass of the succession and stated in the recapitulation thereof as follows, viz:

Cash in banks	$30,682.21
Cash at residence	2,645.51
Cash for sugar sold	2,255.00

Petitioner claims that said assets, as left by the decedent, were not bequeathed to Mrs. Bettie Allen under the terms of the will of R. H. Allen and were not otherwise disposed of, and that they accrue and belong to the legal heirs of said R. H. Allen, including your petitioner.

2. Petitioner opposes items 39, 40, and 41 of the debts and
128 legacies recognized in said account, viz, $500 each to Mrs. Bettie De Berry, Mrs. Ellen B. Baker, and Mrs. Jennie Boyle, and petitioner claims that under the terms of the will the said three parties are entitled together to only five hundred dollars, making this opposition, however, only for the purpose of bringing before the court the proper interpretation of that clause of the will.

3. Petitioner opposes item 38 of debts, being the commissions of executor and executrix, $3,282.82, on the ground that it is excessive, and on the ground that the executors who are legatees under the will are not legally entitled to commissions.

4. Petitioner opposes all of the items of debts to be paid as enumerated in said account, and requires full proof thereof, and specially opposes their payment out of the unbequeathed cash accruing to the heirs, particularly the taxes which are payable out of the property, taxes, and all expenses arising out of the administration of Rienzi plantation during the year 1894, which should be paid out of the crops of the year.

Wherefore opponent prays that this opposition be maintained, and that the account be amended as hereinabove suggested and set forth and for general relief.

(Signed) FENNER, HENDERSON & FENNER AND THOMAS A. BADEAUX, *Attorneys.*

Filed February 5th, 1895.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

Petition and Opposition of R. H. Allen, Jr., Thomas H. Allen, Jr., Harry Allen, and Mrs. J. C. Latham.

18th Judicial District Court, Parish of Lafourche.

Succession of RICHARD H. ALLEN. No. 1417, Probates.

The petition of opposition of R. H. Allen, Jr., herein appearing as trustee for his wife and children; of Thomas H. Allen, Jr., appearing as trustee for his wife and children; of Harry Allen, ap-
129 pearing as trustee for his wife and children, and of Mrs. Mary Louise, wife of J. C. Latham, herein authorized and assisted by her said husband, respectfully shows:

That they oppose the following parts and items of the petition and provisional account herein filed by the executors, viz:

They oppose that portion of said account which recognizes them as owners of only one-ninth each of one-half of Rienzi plantation.

Petitioners claim that under a proper interpretation of the will of Richard H. Allen, deceased, they are the legatees of one-fourth each of the one-half of said plantation, or that if the five children of Cynthia Smith are included at all as beneficiaries of said joint legacy (which petitioners deny), then petitioners claim that the said five children take only as a class and are entitled only to one-fifth of said legacy, and that in such event that your petitioners are legatees of said one-half of said plantation in the proportion of one-fifth each.

Petitioners oppose the proposition in the petition accompanying the account stating that petitioners and their co-owners of Rienzi will be required to pay the cost of carrying on said plantation after January 8th, 1895, hereby declaring that they are unwilling that said plantation shall be carried on for their accounts or that they shall be made responsible for such expenses. They state that the controversies touching the ownership may delay the turning over of the property, and prefer that the plantation should be sold and the proceeds substituted for the property, or, if not sold, that it should be rented for the year.

Wherefore opponents pray that this opposition may be maintained, and that the account may be amended as herein suggested, and for general relief.

(Signed) FENNER, HENDERSON & FENNER AND THOMAS A. BADEAUX, *Attorneys.*

Filed February 5th, 1895.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

130 *Petition and Opposition of Gaston Smith, Fred W. Smith, Thomas A. Smith, Mrs Nellie Houchens, and Ogden Smith to the Provisional Account.*

THE STATE OF LOUISIANA, }
Parish of Lafourche. }

Eighteenth Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417, Probates.

To the honorable the eighteenth judicial district court of the State of Louisiana, sitting in and for the parish of Lafourche:

The joint petition and opposition of Gaston Smith and of Fred W. Smith, who reside in the city of New Orleans, parish of Orleans, State of Louisiana, and of Thomas A. Smith, of Mrs. Nellie Houchens, *née* Smith, widow of the late Josiah B. Houchens, and of Ogden Smith, who reside in the parish of Lafourche, State of Louisiana, respectfully represents:

That they are the sole and only heirs of their mother, Cynthia A. Smith, *née* Allen, and as such coheirs-at-law by representation of their predeceased mother, late sister of the late Richard H. Allen, of all the property, goods, and effects left by deceased, Richard H. Allen, which had not been by him disposed of in the last will and testament.

That they are also made colegatees by a particular title under the last will and testament of their uncle, the late Richard H. Allen.

That the last will and testament of the aforesaid late Richard H. Allen was duly probated by this honorable court on the — day of September, 1894, and its registry and execution ordered.

That under the terms of the aforesaid last will and testament of testator your petitioners and opponents were devised in indivision the undivided five-eighteenths of the sugar plantation known as the Rienzi plantation, including mules, implements, and all other articles which may be by law immovables by destination or
131 by the objects to which they are applied.

That your petitioners and opponents were also bequeathed by the testator, under the terms of his aforesaid last will and testament, in indivision, the undivided five-ninths of all his rights, title, and interest in and to a certain claim against the Government of the United States for the sum of one hundred thousand dollars for army supplies by him furnished.

That no residuary or universal legatee has been appointed or instituted by the testator in his aforesaid last will and testament; that under the laws of this State for such cases made and provided the heirs-at-law not excluded by the aforesaid last will and testament are entitled to inherit all of the property, goods, and effects left by deceased which had not been by him disposed of under the last will and testament.

That by the terms of the last will and testament of the deceased

Mrs. Jennie Boyle, *née* Looney, wife of John Boyle, who resides in the city of St. Louis, State of Missouri, the sole and only heir of her predeceased mother, Mrs. Rose Ann Looney, *née* Allen, widow of the late George Looney and late sister of the deceased, has been bequeathed a legacy of five hundred dollars and has been specially excluded from any other claims that would otherwise have devolved upon her as coheir-at-law by representation of her predeceased mother.

That by the terms of the aforesaid last will and testament Mrs. Bettie De Berry, wife of A. W. De Berry, and Mrs. Ellen Baker, divorced wife of Charles Baker, who reside in the State of Texas, the sole and only heirs of their predeceased mother, Mrs. Harriet Deloach, *née* Allen, late sister of testator, have been bequeathed a legacy of five hundred dollars to each of them and have been specially excluded from any other claim that would otherwise have *developed* upon them as coheirs at-law by representation of their predeceased mother.

That by virtue of the exclusion of the aforesaid three nieces under the terms of the aforesaid last will and testament of
132 testator the shares of the aforesaid three nieces of testator in the undisposed portion of the estate, which would otherwise have devolved upon them as coheirs-at-law *per stirpes* and by representation of their respective predeceased mothers, have enured to the benefit of such coheirs-at-law of deceased who have not been so excluded under his last will and testament.

That the aforesaid late Richard H. Allen has not by his last will and testament disposed of the cash in the hands of banks and bankers in the city of New Orleans and in New York city, amounting to the sum of thirty thousand six hundred and eighty-two $\frac{21}{100}$ dollars, nor has he disposed of the cash in residence or the sugar on plantation at the time of his death, which cash in residence and proceeds of said sugar amount to the sum of four thousand nine hundred and $\frac{51}{100}$ dollars, aggregating a sum of thirty-five thousand five hundred and eighty-two $\frac{72}{100}$ dollars.

That no community of acquets and gains existed between the late Richard H. Allen and his surviving spouse, Mrs. Bettie Allen.

That there exists an antenuptial contract between him and his surviving spouse, properly executed, stipulating that there shall be no community of acquets and gains between them as would otherwise have been superinduced by virtue of their marriage in the absence of any stipulation to the contrary.

That the aforesaid late testator left no ascendants nor descendants, hence no forced heirs.

That the heirs-at-law are Thomas H. Allen, brother of testator, the heirs of Cynthia A. Smith, *née* Allen, late sister of deceased, who are your petitioners and opponents, who inherit by representation of their predeceased mother, and John B. Turner and William Turner, who inherit by representation of their predeceased mother, Myra Turner, *née* Allen, late sister of deceased.

That your petitioners and opponents are entitled by representation of their late mother, the predeceased sister of testator, as coheirs-at-

law of the undivided one-third of all the goods and effects left by deceased not disposed of by him in his last will and testament.

133 That your petitioners and opponents oppose all and singular the several items hereinafter mentioned, placed on the provisional account herein filed by a majority of the executors, for the reasons following, to wit:

Items 38, 52, 53.

Item 38, for the reason that two of the executors herein are legatees under the last will and testament of the deceased; that their co-executor, who is not a legatee, is entitled to receive no more than one-third of two and a half per cent. of the assets actually administered by the said executors and reduced to their possession.

Item 52, for the reason that under the terms of the last will and testament Mrs. Bettie Allen was not bequeathed the cash in the hands of banks and bankers in the city of New Orleans and New York city; that under the clause of the last will and testament under which it is sought to justify said disposition no cash or other movables were bequeathed to the said Mrs. Bettie Allen than those specially enumerated therein.

Item 53, for the reason that no such sum is required for the preservation of the estate left by testator or for the education of the minors Cragin, and for the further reason that the executors cannot use the assets of the succession to run a plantation for the benefit of particular legatees.

Your petitioners and opponents further oppose the appropriation of any part of the assets not bequeathed by testator to the payment of any expenses incurred for the benefit and the administration of the Rienzi plantation unless provision and security be made for the reimbursement thereof with interest.

Wherefore your joint petitioners and opponents pray, the premises being considered and after due proceedings had, that there be judgment in favor of your petitioners and opponents maintaining these their oppositions to the provisional account herein filed by a majority of the executors of the above entitled and numbered succession, and decreeing that the aforesaid account herein filed by the aforesaid majority of the executors be accordingly amended

134 and recast.

That your petitioners and opponents be recognized as coheirs-at-law by representation of their predeceased mother to the extent of the undivided one-third of all the property, goods, and effects left by deceased and not disposed of by him in his aforesaid last will and testament.

Your petitioners and opponents further pray for all other general and equitable relief.

(Signed) CHAS. H. OSTERBERGER,
Attorney — Petitioners and Opponents.

Filed February 5th, 1895.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Petition and Opposition of Gaston Smith, Fred W. Smith, Thomas A. Smith, Mrs. Nellie Houchens to the Final Account.

THE STATE OF LOUISIANA, }
Parish of Lafourche. }

Eighteenth Judicial District Court, Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417.

To the honorable the eighteenth judicial district court of the State of Louisiana, sitting in and for the parish of Lafourche:

The petition and opposition of Gaston Smith and of Fred W. Smith, residing in the city of New Orleans, parish of Orleans, State of Louisiana, and of Thomas A. Smith, and of Mrs. Nellie B. Houchens, widow of Josiah B. Houchens, who reside in the parish of Lafourche, State of Louisiana, respectfully represents:

That they oppose all and singular the several items hereinafter enumerated in the final account herein filed by Ogden Smith, one of the executors in the above entitled and numbered succession, to wit:

Items 38, 50, 51, and 52.

Item 38, for the reason that the co-executor, Willie Collins,
135 of the above entitled and numbered succession, is entitled to no more than one-third of two and a half per cent. of the property actually administered and reduced to the possession of the executors; that said executors have not yet reduced to their possession any property whatsoever.

Item 50, because the fees of the attorneys therein mentioned are excessive, unreasonable, and unjust; that said attorneys are entitled to no more than a reasonable compensation for services actually performed and which may have enured to the benefit of the estate.

Item 51 for the same reasons enumerated in opposition to item 50.

Item 52, for the reason that the attorney of the absent heirs is entitled to receive his fee or compensation for services rendered out of that portion which enures to the benefit of the absent heirs; that under the laws of this State for such cases made and provided the said fees for attorneys of absent heirs can only be taxed to the estate as a whole in cases of insolvency.

Wherefore your petitioners and opponents pray, the premises being considered and after due proceedings had, that these their oppositions to the aforesaid final account herein filed by the aforesaid executor be maintained, and that the said executor be ordered to amend his final account in accordance with the views hereinabove stated.

Your petitioners and opponents further pray for all other general and equitable relief.

(Signed) CHAS. H. OSTERBERGER,
Attorney — Petitioners & Opponents.

Filed Feb'y 5th, 1895.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Petition and Opposition of R. H. Allen, Jr., Thomas H. Allen, Jr., Harry Allen, and Mrs. H. Latham.

18th Judicial District Ct., Parish of Lafourche.

Succession of RICHARD H. ALLEN. No. 1417.

136 The petition of opposition of R. H. Allen, Jr., herein appearing as trustee for his wife and children; of Thos. H. Allen, Jr., appearing as trustee for his wife and children; of Harry Allen, appearing as trustee for his wife and children, and of Mrs. Mary Louise, wife of H. Latham, herein authorized and assisted by her said husband, respectfully shows:

1. That they oppose those portions of said account which recognize them as legatees of only one-ninth each of one-half of Rienzi plantation and of the crops of the year 1894 which were hanging by the roots on said plantation; of only one-ninth each of the claim for $100,000 against the United States Government. Opponents claim that under a proper interpretation of the will of R. H. Allen, deceased, they are the legatees of one-fourth each of said above-mentioned assets, or that if the five children of Cynthia Smith are included at all as beneficiaries thereof (which petitioners deny), then petitioners claim that the said five children take only as a class and are entitled only to one-fifth of said legacies, and that petitioners are entitled severally to the other four-fifths.

2. Petitioners oppose all the items on the statement filed with the account, on the ground that many of said items do not exhibit the nature thereof, and they require strict proof as to every item on said statement, and oppose the allowance of any not proved to be proper and reasonable plantation expenses.

Wherefore petitioners pray that this opposition be maintained, and that the account be amended in accordance therewith, and for general relief.

(Signed) FENNER, HENDERSON & FENNER AND T. A. BADEAUX, *Attorneys.*

Filed Feb'y 18th, 1895.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Petition and Opposition of Thomas H. Allen.

18th Judicial District Court for the Parish of Lafourche.

Succession of R. H. ALLEN. No. 1417.

137 The petition and opposition of Thomas H. Allen, of Memphis, Tenn., respectfully shows that he is a brother of the late Richard H. Allen and one of his heirs-at-law, and as such is entitled to his share of the estate of Richard H. Allen, deceased, not disposed of by his last will.

Petitioner opposes the following items in the petition and final account herein filed by Ogden Smith, one of the executors:

1. Petitioner opposes the items Nos. 39, 40, and 41 of the legacies recognized in said account, and claims that the parties named therein, viz., Mrs. Bettie De Berry, Mrs. Ellen B. Baker, and Mrs. Jennie Boyle are entitled together to only $500, making this opposition for the purpose of bringing before the court the proper interpretation of that clause of the will.

2. He opposes specially items 31 and 49 of the debts recognized as chargeable to the unbeqeathed portion of the estate, and claims that the pay-roll of the plantation for September, 1894, is chargeable to the crops of the year, and that the State and parish taxes are chargeable to the Rienzi plantation, on which they were levied. So far as the other items of debts charged against the unbequeathed estate are concerned, the account does not furnish the particulars necessary to inform petitioner of their nature and origin; but petitioner opposes generally all said items which arise out of the administration of the Rienzi plantation during the year 1894, and claims that such items are chargeable and payable out of the crops of the year of said plantation.

3. Referring to items 50 and 51 of the debts charged against the unbequeathed estate, opponent does not object to the payment of fair and reasonable fees, and his information as to the nature and value of the services rendered is not such as to enable him to pass thereon, but he opposes said items until established by proper proof to be fair and reasonable.

Wherefore opponent prays that this opposition may be maintained and the account be amended in accordance therewith and for general relief.

(Signed) FENNER, HENDERSON AND FENNER AND T. A. BADEAUX, *Att'ys.*

138 Filed Feb'y 18th, 1895.
(Signed) P. F. LEGENDRE, *D'y Clerk.*

Petition and Opposition of John B. Turner and William A. Turner to the Final Account.

Eighteenth Judicial District Court, Parish of Lafourche.

Succession of RICHARD H. ALLEN. No. 1417.

To the honorable the judge of the eighteenth judicial district court for the parish of Lafourche:

The joint petition and opposition of John B. Turner and William A. Turner, residing and domiciliated in the State of Texas, to the final account herein presented by Ogden Smith, one of the executors of this succession, respectfully represents:

That as nephews and nearest of kin of the deceased, and in the absence of any residuary or universal legatees under his will herein probated and made executory, they are entitled to inherit the residuum or undisposed portion of the estate, which accrues under

the law to all the legal heirs *per stirpes* for their respective shares and interest therein.

That said share and interest in said residuum is one-third undivided thereof to them jointly by reason of the exclusion and disinherison of two sets of legal heirs under the express terms of the will of the deceased providing for certain money legacies of $500.00 each to Mrs. Ellen B. Baker, Mrs. Bettie De Berry, and Mrs. Jennie Boyle, conditional upon such legatees having no further interest in any other claim in and to said succession, and that by virtue of such formal intention and will of the testator and under the law such disinherison enures to the benefit of the other heirs-at-law not so excluded *per stirpes*, including petitioners and opponents, for their one-third jointly.

That as such heirs-at-law entitled to such residuum they oppose, generally and specially, the payment out of the funds of the
139 estate of any of the expenses for the cultivation of the Rienzi plantation since the death of the deceased, and particularly salaries of overseers and employees, as well as any and all taxes since said date; and petitioners and opponents aver that items Nos. 31, 34, 35, 36, 37, 49 should be stricken off and disallowed or reduced to such an amount as may be established by the evidence.

Petitioners and opponents oppose generally and specially all items of indebtedness from No. 1 to No. 49, inclusive, and particularly items Nos. 2, 3, 5, 6, 14, 16, 18, 28, 30, as not due, and, if due, as excessive, and requires strict proof thereof.

Petitioners and opponents specially oppose item No. 38, charging the succession with the sum of $1,094.27 as testamentary executor's commissions, because no seizin was given by the will, and no commission could be charged except upon such amounts as were actually reduced to possession, and aver that it should be disallowed and stricken off or reduced to the amount established by the evidence.

Petitioners and opponents oppose said final account on the credit side thereof, because it fails to include several valuable assets of the succession, the fruits gathered and crops made and cut on the Rienzi plantation, and other products thereof, such as they existed at the time of the death of said late Richard H. Allen, and more particularly the following objects or movables which are not immovables by destination or by the objects to which they apply, and which did not constitute part of the Rienzi plantation, viz:

Lumber and iron, of the value of			$308.00
Coal,	"	"	4,620.00
Corn,	"	"	4,000.00
Hay,	"	"	700.00
Total			$9,628.00

And petitioners and opponents oppose said final account (Nos. 56 of item 1) in so far as it treats all of said assets as immovables by destination and as forming part of the Rienzi plantation, and aver that if such lumber and iron, coal, corn, hay were used on said

plantation to take off the crop and to feed live stock since
140 the death of the deceased the value thereof should have been accounted for in this account and said plantation charged therefor; and petitioners and opponents aver that said assets, on the valuation fixed by the inventory and by the provisional account herein filed by the other two executors, viz., the sum of $9,628.00
Should have been added to the total cash assets, viz., the sum of 35,582.72

Under item 11 of the said final account, making an aggregate of cash assets of $45,210.72
To be divided among the heirs-at-law after payment of the particular legacies, debts of the deceased, and the privileged claims and law charges of the succession, one-third of which goes to petitioners and opponents jointly.

Wherefore petitioners and opponents pray that *that* these oppositions be sustained; that the final account herein presented by Ogden Smith, co-executor, be amended accordingly, and as amended be approved and homologated, and all the items hereinabove set forth be disallowed and rejected or reduced to such amounts as may be established by the evidence; that the lumber and iron, coal, corn, hay, and other items be accounted for at their true value and added to the residuum for distribution among the heirs-at-law of the deceased on the basis proposed by said accountant; that petitioners and opponents be recognized as such heirs for one-third jointly and entitled accordingly to such proportion of said residuum, with reservation of rights to a similar distribution of any and all property not herein accounted for and not disposed of under the will, or which may hereafter be found to belong to the estate, or which may be recovered and reduced to possession by the executors, and for all costs of these proceedings and for all general and equitable relief needful in the premises.

(Signed) HENRY CHIAPELLA,
Attorney for J. B. & W. A. Turner, Petitioners and Opponents.

Filed February 26th, 1895.
(Signed) P. F. LEGENDRE, *Dy Clerk.*

141 *Petition and Opposition of Mrs. Bettie Allen to the Final Account.*

THE STATE OF LOUISIANA:

Eighteenth Judicial District Court, Parish of Lafourche.

Succession of RICHARD H. ALLEN. No. 1417, Probates.

The petition and opposition of Mrs. Bettie Allen, a resident of this parish, respectfully represents:

That she is the widow and legatee of the deceased, and as such she opposes each and every item of the final account herein filed by

Ogden Smith, except such as may agree with the account filed by herself as executrix and her co-executor, W. F. Collins.

And she especially opposes the proposition of the said Ogden Smith to distribute the crop of the year 1894, averring that the same cannot be accounted for until it has been sold, and thus the amount of the net proceeds of the same learned, further averring that a part of the said crop has been sold and a part still remains unsold, and that the proceeds of the part sold have not been accounted for by the said Ogden Smith.

But she says if this court should hold that the crop should now be accounted for, then she is entitled under the will of the deceased to the whole of the same, after paying the expenses for saving and harvesting the same since the death of the deceased.

And opponent further opposes the amount proposed by the said Ogden Smith to be allowed to Messrs. Clay Knobloch & Son for attorney's fees on the ground that the same is exorbitant, and that the only services rendered by said attorneys were to file the said final account of Ogden Smith, and that the other attorneys, namely, Beattie & Beattie, had been employed for the purpose of filing the accounts, and that said Beattie & Beattie had caused the last said will and testament of the deceased to be probated, and further had acted as the legal advisers of all the executors up to the time of the filing of the said final account of the said Ogden Smith, and
142 had obtained divers orders necessary for the carrying on of the estate, selling the crop, building fences and roads, and the general running of the Rienzi plantation of the deceased.

Opponent further avers that in her account as executrix with her co-executor, W. F. Collins, she proposed to fix the amount of the fees to be allowed the attorneys in their final account, which could only be filed after the sale of the crop of 1894.

Wherefore opponent prays that her said oppositions be maintained, and that the account filed by herself and W. F. Collins, as executrix and executor, be homologated and approved, and for all and general relief, &c.

(Signed) BEATTIE & BEATTIE. *Attorneys.*

Filed March 21st, 1895.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

Testimony on the Part of Ogden Smith, Co-executor.

(Offered in evidence.)

The final account filed by him on the 5th of February, 1895; also the petition which accompanies that final account.

It is admitted by all parties in interest that the items on the final account, numbered from 1 to 37, inclusive, are the same as appear on the provisional account, and all these items are admitted as being correct; that item 49, amount State and parish taxes, $1,348.31, is also correct.

It is admitted by all parties in interest that the legal heirs of the

testator, R. H. Allen, who died without issue, are, 1st, Thomas H. Allen, Sr., a brother, of Memphis, Tennessee; 2nd, Mrs. Cynthia Allen Smith, his sister, dead, and represented by five children, namely, Ogden Smith, Gaston Smith, Frederick W. Smith, Jr., Thomas Allen Smith, Mrs. Nellie Smith, widow of Josiah B. Houchens.

3rd. Mrs. Harriet Allen, his sister, wife of Loyd W. Deloach, dead, represented by her two children, namely, Mrs. Ellen B. Deloach, divorced wife of Charles Baker; Mrs. Bettie Deloach, wife of A. W. De Berry, of Aransas Pass, Texas.

143 4th. Rose Ann Allen, his sister, wife of George Looney, dead, and represented by her sole child, Jennie Looney, wife of John Boyle, of St. Louis, Missouri.

5th. Mrs. Mira Allen, a sister, wife of John B. Turner, dead, and represented by her two children, viz: John B. Turner, of Groveton, Texas, and William A. Turner, of Huntsville, Texas.

"This admission is not to be held as having been made by the executrix and executor, W. F. Collins."

This admission is made without prejudice to the rights of any of the heirs who claim the exclusion of others under the term of the will.

OGDEN SMITH, sworn, says:

Q. What is your age, place of residence, and occupation?

A. I am 38 years of age, manager of the Rienzi plantation, and reside in the parish of Lafourche.

Q. Were you one of the executors of the late Richard H. Allen?

A. Yes, sir.

Q. The same that filed a final account in this case?

A. Yes, sir.

Q. Please state when you employed Clay Knobloch & Son to represent you, and all of the facts and circumstances connected with the employment as your counsel in this case.

A. I cannot remember exactly what time it was I was employed — them.

Q. You will notice here that the final account was filed on the 5th of February, 1895. How long before that you employed them?

A. A couple of weeks or more before my final account was filed. I employed them for the simple reason that the executors and executrix could not agree as to the disposition of the property. Two of the executors or one of the executors and the executrix claimed that Mrs. Bettie Allen was entitled to all the cash. I claimed that it was unwilled. Prior to this there had been a disagreement among the executors as to the disposition to be made of the crop. I was told by Judge Beattie, who was then our counsel, that he would file a provisional account of the cash and land, he then having told me that the cash was unwilled. I consented to this and afterwards, when the account was made out with two of the executors or executor and executrix giving Mrs. Allen all the cash, I

dissented and employed Knobloch & Son. Previously to
144 this I had told Gov. Knobloch that I would require his services to represent me in the disposition of the crop, which would be a final account rendered by Mrs. Allen and Mr. Collins.

Q. What advice did Klobloch & Son give you, and what kind of 'an account to file?

A. A final account.

Q. Did he give his reasons therefor?

A. Yes, sir.

Q. Please state them.

A. He said that he thought the sooner the estate was settled the better it would be for all parties, and that it was the only way to settle it. By filing a provisional account the expenses would be increased.

Q. Did he mention anything about the delays?

A. He told me that the filing of a provisional account left the estate opened for an indefinite period; that the law required an account every year, and that a provisional account could be filed, and the following year another, and so on.

Q. Did you ever have any conversation with Mrs. Bettie Allen, the widow of R. H. Allen, either prior to or subsequent to the death of Mr. Allen, on the question of his cash, whether it was willed or not?

Counsel for Executor Ogden Smith offered to prove not only by this witness, but also by Mrs. Nellie Houchens and Mrs. Mary Smith, that in various conversations had with Mrs. R. H. Allen immediately prior to and subsequent to the death of Mr. Allen she had admitted that the cash in bank, etc., of the legacies made in the will had not been willed by her husband; that she had endeavored to get him to will it and he would put her off. One occasion she admitted that she had called on him while he was sick in bed to will that cash to her; that he had answered that he was too weak and wanted to take a nap, and turned over into his bed, and he took a nap; that when he woke up she admitted that she gave him a toddy so as to brace him up and asked him again to get out of bed and will that cash, and he refused to do so.

To all of which evidence counsel for the co executors, Mrs. Allen and Mr. Collins, objected on the ground that it was irrelevant and inadmissible under the law and the plea. The court having sustained the objection for the reason that if there was any ambiguity in the will, the introduction of any parole testimony to explain it,
that the evidence could only come from the party herself to
145 -how the declaration was made by the deceased and not through the mouth of a third party, as it would only be hearsay; to which ruling of the court counsel for Executor Ogden Smith reserved this his bill of exception to the ruling of the court.

Q. What relationship is there between you and Mrs. Nellie Houchens?

A. She is my sister.

Offered in evidence—

The record, No. 3066, on the docket of this court entitled Mrs. Nellie Smith, widow of J. B. Houchens, *vs.* Thomas H. Allen, Sr., *et als.*, particularly the petition and the affidavit of plaintiff and the order of court thereof, and also the bond for attachment.

Counsel offers these documents to prove that the counsel of the co-executors on the 12th of November, 1894, representing Mrs. Nellie Smith, widow of J. B. Houchens, in that suit, which is a suit about a writ of attachment, and made his client allege and swear to the allegations of the petition that the cash money which is now in contest had not been willed by Mr. Allen, and counsel also offered to prove about the bond of attachment in that case, to which a witness, Ogden Smith, signed as surety for the sum of $7,700, that he was induced to sign on the statement by counsel that he was worth sufficiently to sign the bond, taking his interest in the real estate and the cash into consideration, all of which evidence was offered to prove that the clause in the will upon which the contest for the cash arises was, in the opinion of counsel of the co-executors, before filing a provisional account herein, admitting of doubt in its proper construction; to all of which evidence counsel for the co-executors objected on the ground that it was irrelevant, *res inter alio-acta*, and inadmissible under the law and the pleadings. The court having sustained the objection, counsel for the co-executor, Ogden Smith, reserved this bill of exception to the ruling of the court.

Q. Did you make any agreement with Clay Knobloch & Son as to the quantum of fees to be charged by Clay Knobloch & Son for their services in this case?

A. No, sir.

Cross-examined by Judge BEATTIE:

146 Q. How much crop was made upon the Rienzi plantation in the year 1894?

A. I cannot give you the exact figures.

Q. About how much?

A. Between 1,700,000 and 1,800,000 pounds.

Q. How many barrels, about?

A. About 5,000.

Q. How much molasses was made?

A. That I cannot tell.

Q. How much sugar has been sold?

A. A few barrels. I cannot say how much.

Q. How much molasses has been sold?

A. Four or five hundred barrels.

Q. How much were the expenses for the taking off of that crop, from the 19th of September until the crop was concluded?

A. $19,720.26.

Q. How much has been the expenses of the plantation since that time?

—. I don't know; the pay-rolls will show.

Q. From your knowledge of sugar which has been made, will it test over eighty degrees polariscope?
A. Yes, sir.
Q. The whole of it?
A. Yes, sir.

Cross-examined by Mr. FENNER:

—. Was this crop of 1894 all standing at the time of Mr. Allen's death?
A. Yes, sir.
Q. None had been cut?
A. No, sir.
Q. You were the manager of the plantation?
A. Yes, sir.
Q. These mules, wagons, and agricultural implements that appear on the account were placed on the plantation by the deceased for its cultivation?
A. Yes, sir.
Q. About this coal that was on the plantation at the time of Mr. Allen's death, do you know who put that coal there?
A. By Mr. Allen; it was placed on the plantation for its running purposes.
Q. What was done with that coal?
A. It was consumed.
Q. What became of the lumber and iron?
A. It has been used by the plantation and the iron for the blacksmith shop.
Q. Those wagons and carts here on the account, were they placed upon it or upon the plantation by Mr. Allen for its services?
A. Yes, sir.
Q. The agricultural instruments that appear on the account, were they placed on the plantation by Mr. Allen for its services?
A. Yes, sir.
Q. What about the corn and hay that appears on the account here, that was on the plantation at the time Mr. Allen died?
A. Yes, sir; it was grown on the plantation, and it was used for the feed for the stock on the plantation.

Cross-examined by Mr. CHIAPELLA:

Q. There is a lot of iron and lumber on the account of executors as having been on the place at the time of the death of Mr. Allen, amounting to $308.00?
A. It is on the plantation; it has been used on the planta-
147 tion; it was sawed on the place, and the iron was bought in New Orleans. At the time of the death of Mr. Allen it was scattered all over the place.
Q. Where was the corn at the time of the death of Mr. Allen?
A. In the barns.
Q. What of the hay?

A. It was in two hay sheds. They have been consumed. None of it was sold in New Orleans.

Q. Did Mr. Allen used to sell any of his corn and hay in New Orleans?

A. No, sir; not to my knowledge.

Q. What about the coal; when was it bought?

A. Some time in the spring.

Q. Where was it at the time of the death of Mr. Allen?

A. It was on the plantation.

Q. Mr. Allen died a month before the grinding season?

A. Yes, sir.

Q. The coal was consumed at the sugar-house for making the crop after the death of Mr. Allen?

A. Yes, sir.

Q. The whole of it?

A. Yes, sir—that is, at the sugar-house and draining machine.

Q. The whole of it was used on the place?

A. Yes, sir.

Q. None of it was sold to the neighbors?

A. No, sir.

Q. It was all subsequent to the death of Mr. Allen?

A. Yes, sir.

Q. To make that crop did you- executors draw from the funds of the banks in New Orleans?

A. Yes, sir; to harvest the crop.

Q. You obtained the orders of the court?

A. Yes, sir.

Q. What is the total amount you have drawn from the banks to harvest that crop?

A. I cannot say.

Q. This statement "A," which is annexed to your final account, showing the expenses for making the crop since the death of the testator, is correct up to the filing of the account?

A. Yes, sir.

Q. Was it made by you?

A. No, sir; by T. H. Allen.

Q. You say it is correct?

A. Yes, sir.

Q. It is annexed to your account?

A. Yes, sir. I think this account shows that we spent almost $20,000.00 to make that crop. That is correct.

Q. Where did you get the money?

A. From the banks.

Q. From orders obtained from the court?

A. Yes, sir.

Document "A" offered in evidence by Mr. Chiapella.

Q. Are there any mules on the place not used or of no service on the plantation?

A. There are no mules used for the saddle or for the harness.

Q. Was there any standing crop at the time of the death of Mr. Allen except the crop of cane?

A. No, sir.

Q. You are the same person that is legatee under the will?

A. Yes, sir.

Q. Also one of the executors?

A. Yes, sir.

By CLAY KNOBLOCH & SON:

148 Q. I think that in your final account, under item 8 of the assets, Theodore Lasseigne and Elphege Boudreaux, you state that these two parties were tenants on the place and borrowed some money to make the crop and reimbursed the money. State the fact.

A. These two parties were tenants on the Rienzi plantation and had a contract with Mr. R. H. Allen to make cane by the ton. They needed some mules and money to pay labor, which he loaned them and took a mortgage note, which note has since been paid from the proceeds due them from the sale of the cane.

Q. You say mortgage note. On what did the mortgage rests?

A. On the entire crop.

Q. Did it rest on real estate?

A. No, sir.

Q. You mean, then, a privilege?

A. Yes, sir.

Q. Did they sell their cane by the ton to the Rienzi factory?

A. Yes, sir.

Q. What became of the cane grown up?

A. Converted into sugar.

Q. Did you keep a separate account for that sugar?

A. No, sir.

Q. You parted it confusedly with other cane raised on the plantation?

A. Yes, sir; kept a separate account per tons.

Q. You remember how many tons?

A. I do not.

Q. Do you remember how much you paid them per ton?

A. I do not.

By BEATTIE & BEATTIE:

Q. This cane was all raised on the plantation?

A. Yes, sir.

Q. They were tenants on the plantation?

A. Yes, sir.

Recrossed by Mr. CHIAPELLA:

Q. Were Lasseigne & Boudreaux the only tenants on the place who made crops?

A. Yes, sir; the only ones that made a crop of sugar.

Q. How many acres did Lasseigne have?

A. 30. Boudreaux & Lasseigne were a firm.

Q. They were the only tenants?
A. Cane tenants.
Q. Coal on the place was used to grind their cane?
A. Yes, sir.
Q. Do you know how many tons they made?
A. No, sir. (Witness, referring to the books, says, 516 tons.)
Q. Do you know what quantity of coal it took to make that quantity of cane?
A. No, sir.
Q. Do you know how many days it would take to make that number of tons?
A. No, sir; it varies.
Q. An average?
A. 2½ or 2¾ days.
Q. Do you know what quantity of coal the sugar-house consumed during that length of time?
A. No, sir.
Q. These tenants paid their rent by turning over their cane to the plantation?
A. Yes, sir; we paid the tenants by the ton.

By Mr. FENNER:

149 Q. Can you state by referring to the books what you have paid for those cane?
A. $2.75 per ton.

By BEATTIE & BEATTIE:

Q. You say you planted some cane in the fall. Was it not the usual custom with the plantation and with the neighboring plantations to plant their cane in the fall?
A. That was the only way we could keep the hands on the plantation.
Q. These tenants paid no rent; they were merely all cultivating cane on the plantation, and they paid for their labor so much per ton that they would deliver at the factory?
A. Yes, sir.

By Mr. CHIAPELLA:

Q. You mean to say that they paid money for the land that they cultivated?
A. No, sir.
Q. But that they were given a certain quantity of land to cultivate, which they paid for by turning over cane which they made on that land?
A. The profit consisted in the different prices paid per ton and the price obtained from the kind of sugar derived from that ton.

By Mr. FENNER:

Q. The agreement was, then, that Mr. Allen would allow them to cultivate a certain portion of his land, agreeing to pay them a

specified price for every ton of cane that they may raise upon that land and delivered to him?

A. Yes, sir.

Q. What price?

A. $2.75 per ton.

"It is admitted by all parties that Margaret Elizabeth Greene, party to the marriage contract with Mr. Richard H. Allen, which contract is already offered in evidence, is the same identical Mrs. Bettie Allen, widow of R. H. Allen, who is one of the executors in in this case."

Examination of OGDEN SMITH continued:

In regard to the coal, I could estimate about 600 barrels to be consumed, three days to take off 516 tons of cane into sugar.

By BEATTIE & BEATTIE:

Q. These tenants were working the land of the plantation and were paid for their labor?

A. Yes, sir; by paying so much per ton for their cane.

By Mr. CHIAPELLA:

150 Q. Boudreaux & Lasseigne were the only parties occupying that position?

—. Yes, sir.

By Mr. FENNER:

Q. Can you tell us about how many tons of cane were grown on that plantation altogether?

A. 12,974 tons.

By Mr. CHIAPELLA:

—. Do you know how many tons of coal there was on the plantation at the time he died?

A. There was about between sixteen and seventeen thousand barrels; I don't know the number.

Testimony of T. A. Smith in the Above-entitled Case.

T. A. SMITH recalled:

Q. Look at this statement "A" and state whether it is correct. State all you know about it—in whose handwriting it is in, where it is from.

—. It is correct up to the date it is made, up to the 25th day of January, 1895.

Q. Where did you get the facts and figures?

A. From the books.

Q. You kept the books?

—. Yes, sir.

Q. That account is absolutely correct?
A. That is, up to that date.

Account "A" offered in evidence.

Cross-examined by BEATTIE & BEATTIE:

Q. How much sugar was made on the Rienzi plantation in the year 1894?
A. 1,760,036 pounds.
Q. How much molasses?
A. Well, there is a good deal of molasses in the cisterns and tanks.
Q. How much in barrels?
A. 601 barrels put up and shipped. Now, I would say there is about 150 barrels still on hand in tank and about 60 barrels filled up. Now, there is about 200 barrels of molasses in process of manufacture, I estimate.
Q. How is that sugar put up?
A. All in barrels.
Q. About how many barrels?
A. 5,017 barrels made. A few barrels has been sold.
Q. How many has been sold?
A. 13 barrels.
Q. Do those barrels always weigh the same amount?
A. No, sir; some will net 340 and some 350 and some as high as 380 pounds. The average would be about 345 pounds.
Q. In other words, the weight differs?
A. Yes, sir.
151 Q. They always weigh different weights?
A. Yes, sir; varies in weight.
Q. In this account are all the expenses of rolling put in?
A. There is an expense of four hundred and some odd dollars advanced Boudreaux & Lasseigne that is not in.
Q. Any other expenses you know of?
A. There are expenses incurred since that is not put in this account. The day this account was filed there was an item of four hundred and some odd dollars as due by Boudreaux & Lasseigne that is not included.
Q. Some expenses have been incurred since rolling?
A. Yes, sir.
Q. They are not on that account?
A. No, sir.
Q. Did the barrels of molasses all *guage* the same thing?
A. No, sir; they *guaged* from 50 to 53 gallons.
Q. Has there not been some expenses made in the crop of 1894 to within the last few weeks?
A. Yes, sir; in fact, the expenses of moving the 1894 crop.
Q. Has there not been expenses made in drying sugar?
A. Yes, sir.
Q. Have all of these expenses been paid up?

A. No, sir; that will be paid on this month's pay-roll, at the end of this month.

By Mr. CHIAPELLA:

Q. There was some sugar, 244 barrels, sold in New Orleans under the order of court?

A. Yes, sir; 243 barrels sold in New Orleans and one barrel sold on the plantation by the executors by order of court.

Q. Do you know the amount these sales realized?

A. Yes, sir; the books will show.

Q. What amount is it?

A. The amount that appears on both accounts are correct.

Q. $2,255.00 for the 243 barrels sold in New Orleans?

A. Yes, sir; that is correct.

By CLAY KNOBLOCH & SON:

Q. By Boudreaux & Lasseigne I understood you to say that they owed some 240 and some odd dollars. Please explain the whole transaction.

A. Boudreaux & Lasseigne were tenants on the plantation, with a contract entered into with Mr. R. H. Allen the first of last year to make cane on the plantation. He agreed to furnish them the land free and to pay them $2.75 a ton of cane delivered at Rienzi factory.

Mr. Allen agreed to furnish them with such supplies as they
152 required in making that crop. At the time of Mr. Allen's death they owed him on an open account like 600 dollars; I don't know the exact amount; the books will show. As they had a contract with Mr. Allen, the executors had continued to furnish them with cash and supplies. To take off that crop the executors advanced them something like $411.00. They delivered all of that crop to the factory, and their account was paid out of their cane, just as their note of $400.00 was paid. The cane was made into sugar and goes with the Rienzi crop.

By the COURT: Their account is balanced and they don't owe a cent. There were $411.00 advanced by the executors, which amount was also reimbursed to the executors out of the proceeds of cane.

By Mr. CHIAPELLA:

Q. Was that prior to the 8th of January?

A. Yes, sir.

Q. It was in November or December of 1894?

A. Yes, sir.

Marriage Contract Between Richard Henry Allen and Margaret Elizabeth Greene.

STATE OF LOUISIANA:

CITY OF NEW ORLEANS.

Be it known that this day before me, Hillary Breton Cenas, a notary public in and for the city and parish of New Orleans, State

of Louisiana, aforesaid, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Richard Henry Allen, of this city, party hereto of the one part, and with him also personally appeared Miss Margaret E. Greene, minor daughter of Lorenzo Sidney Greene, and Sarah Rebecca Smith, his wife, of Memphis, in the State of Tennessee, and by her said father and mother, also here present, duly assisted and authorized in the execution of these presents, party hereto of the other part;

Which appearers severally declared that whereas the said
153 Richard Henry Allen and the said Margaret E. Greene had consented and agreed to enter into the bonds of matrimony under the laws and regulations of the said State of Louisiana they had in consequence mutually agreed before the celebration of the same to enter into a formal marriage contract in order to establish the civil rules and regulations which shall govern the said contemplated marriage:

Wherefore and in consideration of the premises the said parties have mutually agreed, determined, and contracted, and by these presents do mutually agree, determine, and contract, as follows, to wit:

Article first.

It is hereby determined that the said intended husband and wife shall be separate in property and that all property of whatsoever description now belonging to or which may hereafter be acquired by either party shall be, and continue under the separate and exclusive administration of said party respectively, without any exception or reservation whatsoever.

And to this end and purpose the said parties respectively renounce all laws and statutes of this State, establishing a community of acquets and gains between husband and wife.

Article second.

And the said intended husband declared that being desirous of giving to his said intended wife some substantial token of the love and affection which he entertains for and bears unto her, he doth therefore in consideration of the same by these presents, give, grant, convey, transfer, assign and set over with all legal warranties by title of donation "*inter vivos*" gratuitous, and irrevocable and in as complete form as donation can be made unto her his said intended wife, who accepts the same;

A certain lot of ground together with all the buildings and improvements thereon, rights, privileges, customs, ways, servitudes and appurtenances thereunto belonging or in anywise appertaining, situate in the first district of this city in the square bounded by
Gravier, Magazine and Natchez streets and Bank alley desig-
154 nated by the number "fifty-five" on a plan drawn by C. A. Bedin surveyor on the 24th day of January 1855, and deposited in this office for reference, and measuring about twenty-two feet front on Gravier street, twenty-one feet three inches and a

quarter in width in the rear by about eighty-two feet in depth on the side towards Magazine street and about eighty-five feet three inches in depth on the side adjoining lot No. fifty-seven;

Which said property is herein valued at the sum of fourteen thousand dollars, and was acquired by the said Richard H. Allen and the late James I. Robson jointly by purchase from John F. Clay, by an act passed before Theodore Guyol, a notary public, in this city on the 15th day of March, 1853, and by an act passed before me, the said notary on the 28th day of February, 1855, the said Allen acquired by purchase from the succession of the said Robson the entire interest of the latter in said property.

The same is entirely free from encumbrance as is hereby declared by the said Allen with which declaration the said intended wife acknowledges herself satisfied and accordingly waives the present production of a certificate from the recorder of mortgages in and for this "parish" to be annexed hereto agreeably to article "3328" of the Civil Code of this State hereby fully exonerating me notary from all responsibility whatsoever in regard to the same.

The said intended wife declares to have renounced and she does by these presents renounce and forever relinquish every general mortgage legal or tacit and all privileges and other rights whatsoever which the laws of this State give or may give to her over the present and future property, of her said intended husband for any consideration or on any account whatsoever, in consequence whereof the said intended husband may sell, alienate or mortgage his present or future property or otherwise dispose of the same as to him shall seem fit without the renunciation on the part of the said intended wife of the mortgages and privileges to which she would otherwise have right being necessary for the validity of the acts of the said intended husband and for the security of the purchasers, or other persons interested therein.

155 Thus done and passed in my office, at the city of New Orleans in the presence of Charles F. Barry and Arthur V. Fleming competent witnesses residing in this city who hereunto sign their names with the said parties and me notary on this twenty-third day of June A. D. eighteen hundred and fifty-eight.

(Originally signed) BETTIE GREENE.
L. S. GREENE.
S. R. GREENE.

CHS. F. BARRY.
A. V. FLEMING.
H. B. CENAS, *Not. Pub.*

I, register of conveyances, certify that the foregoing donation has been this day recorded in my office in Book No. 77, fo. 129.

New Orleans, July 6th, 1858.

(Signed) F. B. VINET, *D'y R.*

D. B. 7, fo. 321.

I, the undersigned, Henry L. Garland, Jr., custodian of notarial

records, hereby certify that the above — foregoing is a true and correct copy of the original act on file in my office.

New Orleans, March 20th, 1895.

(Signed) HENRY L. GARLAND, JR.,
Custodian of Notarial Records.

Filed in evidence March 21st, 1895.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

Statement "A," Showing Expenses on Crops Since Death of Testator.

Expense account.

Oct.	5.	Freight and expense	$ .50
	22.	" "	17.70
	22.	Thermometer vacuum pan	16.00
	22.	Stauffer, Eshleman & Co.	90.60
	24.	Provisions, boarding-house	63.52
156			
	24.	Supplies, sugar-house	17.90
	24.	Set books	4.10
	24.	Freight	2.30
	27.	Lime and sulphur	58.69
	27.	Oils	43.19
Nov.	1.	Freight	9.00
	5.	Insurance	315.00
	5.	30 bbls. lime	27.00
	10.	Oct. pay-roll	3,812.35
	10.	Cooperage	54.35
	15.	Oils	32.77
	22.	Coal oil	5.72
	22.	Belting	4.68
	22.	Sugar sample boxes	8.05
	26.	Gasoline	27.05
	26.	Ben. Johnson	4.00
	26.	Telegrams	6.70
	26.	Freight	12.35
Dec.	6.	J. & M. Schwabacher	11.58
		I. L. Lyons & Co.	26.18
		L. J. Souer	29.45
		Ong, Hiller & Co.	51.57
		H. W. Frost	95.58
		Freight bills	10.50
		Wagon bre-ching	16.00
		November pay-roll	5,206.60
		J. & M. Schwabacher	21.66
		L. J. Souer	27.90
	10.	Freight	1.20
	10.	" on roller	12.00
	14.	Nails	9.90
	14.	Gasoline	27.05

	14.	F. P. oil	5.20
	28.	Gasoline & oils	60.13
157			
	28.	Tallow	13.37
Jan'y	2.	Sample boxes	2.75
	5.	Freight	5.05
	10.	L. Julliat, engineer	472.00
	10.	Freight	10.70
	12.	Ed. Badeaux	7.50
	12.	Stamps	1.00
	12.	December pay-roll	6,259.30
	12.	Cooperage	130.55
		L. J. Souer	27.55
		I. L. Lyons	17.15
		J. M. McCormick	244.80
		Woodward, Wight & Co.	33.00
		Whitney iron works	56.10
		J. & M. Schwabacher	29.86
		Ong, Hiller & Co.	37.40
		Freight	8.19
		S. Blum & Son	7.90
		A. J. Clements & Co.	13.50
		Ong, Hiller & Co.	9.00
		A. Molaison	14.60
		L. J. Souer	69.30
Jan'y	12.	L. J. Aucoin	15.95
	"	J. D. Babin	166.67
	"	Jake Irving	3.00
	"	Ogden Smith	333.34
	"	C. Flextaner	173.33
	"	T. A. Smith	250.00
Jan'y	15.	W. F. Collins	86.92
	16.	Freight	10.00
	16.	L. Keefe	675.58
	16.	Cooperage	200.53
	19.	Beef bill	44.30
	19.	Thibodaux bridge	25.05
158	19.	H. Tetreau	5.00
	25.	Freight	20.00
			19,730.26

Filed in evidence March 21st, 1895.

(Signed) P. F. LEGENDRE, *D'y Clerk.*

Answer to Appeal on the Part of J. B. Turner and W. A. Turner, Appellees.

Filed January 4th, 1896. (Signed) Paul E. Mortimer, D'y Clerk.

In the Supreme Court of the State of Louisiana.

Succession of RICHARD H. ALLEN. No. 11998.

Now, by their undersigned counsel, into this honorable court come J. B. Turner and W. A. Turner, appellees herein, and for answer to the appeal of appellants herein taken aver and allege as follows, to wit:

1st. That the judgment of the eighteenth judicial district court for the parish of Lafourche, read and signed in open court on June 10th, '95, not having been appealed from by appellees *inter sese*, is final and conclusive as to them, and constitutes *res judicata* as to all matters in dispute and controversy between them respectively, and is not subject to review in this honorable court.

2nd. That accordingly the demand contained in the so-called answer to appeal filed herein by Mrs. Jennie Boyle and by Mrs. Ellen B. Baker and Mrs. Bettie De Berry, that they be recognized as joint heirs-at-law of the testator, and that they be placed on the accounts and tableaux of distribution for one-fifth ($\frac{1}{5}$) of the
159 residuum to said Mrs. Boyle and for one-tenth ($\frac{1}{10}$) each to said Mrs. Baker and Mrs. De Berry, should be disregarded and rejected as not properly before the court and not subject to review.

3rd. That in that regard the judgment of the district court, not being appealed from by either of the branches of heirs *inter sese*, should be maintained and affirmed, and the distribution of the residuum of the estate as fixed and ordered by said judgment should remain unaltered.

4th. That the appeal of R. H. Allen, Jr., Harry Allen, T. H. Allen, Jr., and Mrs. Mary Louise Latham should be restricted to the matters in controversy between them and the children of Mrs. Cynthia A. Smith in regard to their respective interests in the Rienzi plantation in which the other appellees herein are not concerned or interested in any way, and that said appeal should not be construed as involving a review on appeal of the distribution of the residuum as fixed and determined by the judgment of the district court.

5th. That the appeal taken by Beattie & Beattie not having been perfected has been abandoned, and the judgment remains a finality as to them.

6th. That the appeal taken by Mrs. Bettie Allen, individually and as executrix, together with her co-executor, Collins, involves the sole matters in controversy herein between said appellants and all of the appellees together (except the special appeal and controversy between the Allen and Smith heirs *inter sese*), and will be found upon due consideration not to be well grounded in law nor supported by the facts and evidence herein.

Wherefore respondents and appellees J. B. Turner and W. A. Turner respectfully pray that the judgment of the eighteenth judicial district court for the parish of Lafourche, appealed from by Mrs. Bettie Allen individually and as executrix, together with her co-executor, Collins, be maintained and affirmed at appellants' costs.

Respondents and appellees further pray that said judgment of the district court, being unappealed from by appellees *inter sese*, be held to be final and conclusive as to them of all matters
159½ therein adjudicated and passed upon.

Respondents and appellees further pray for all general and equitable relief, &c., &c.

(Signed) HENRY CHIAPELLA,
Attorney for J. B. and W. A. Turner,
Respondents and Appellees.

160 Copy of opinion and judgment rendered by the supreme court of the State of Louisiana in the case entitled Succession of Richard H. Allen, No. 11998 of the docket of that court, made part of the transcript of appeal in this case, bearing the same title and numbered 12331 of the docket.

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *March 9th*, 1896.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

His honor Mr. Justice McEnery pronounced the opinion and judgment of the court in the following case:

Succession of RICHARD H. ALLEN. No. 11998.

The deceased left the following will: (Here follows a copy of the will, to be found on page 95 of this transcript.)

A motion has been filed by the executor Ogden Smith, who is one of the heirs, to dismiss the appeal from the judgment adverse to the Allen heirs, taken by them.

In the Succession of Ames, 33rd Ann., 1318, this court had occasion to notice the distinction between the functions of an administrator and an executor, giving to the latter, when a creditor, the right of appeal from a judgment adverse to his interest. The reasons assigned for the judgment in that case are conclusive. The executor is the mandatary of the deceased, and a mediator between the parties having an interest in the succession. He represents creditors and heirs, and it is his duty to see that the will is executed according to the wishes and desires of the testator. He is
161 interested in the proper distribution of the funds, and it is — sacred duty to see that they are distributed among those

whom the testator intended should be beneficiaries. Representing all parties, he has an undoubted right to appeal for the common benefit of all parties.

The Succession of Nicholson, 5th Ann., 359, is directly applicable to this case. In that case the testator left a sum of money for "the support of asylums in the faith of the Protestant religion especially devoted to the care of aged persons." There was no institution in the city of New Orleans, where the bequest was to be expended, answering to the description in the testament. The St. Anna asylum, devoted to the relief of destitute and helpless children, claimed the legacy as the only institution in the city of New Orleans coming near the terms and conditions of the will. The judgment of the lower court was in favor of the St. Anna asylum. On appeal by the executor the judgment was reversed. In this case the court said: "The will is his (executor's) mandate. He has no power and is subject to no duty except within its terms and conditions." The executor therefore has the right to appeal from a judgment interpreting the will, which he thinks is contrary to the intentions of the testator. In oppositions to the distribution of a fund there are as many adjudications—separate judgments—as there are oppositions, and the party aggrieved must appeal for relief, and unless he does so this court will not amend the judgment as between the appellees made so by the operation of the appeal, except so far as the judgment between immediate parties to the appeal may affect indirectly their interest. By the appeal of the executor from a judgment adverse to his professed distribution of
162 funds, as he interprets the will, all the beneficiaries, legatees, and heirs are necessarily immediate appellees.

The motion to dismiss is therefore denied.

The executors could not agree on an interpretation of the will, and there were controversies between the legatees and heirs among themselves and with the executors.

Two of the executors, Mrs. Allen and Collins, filed a provisional account proposing to settle the bulk of the estate and distribute the funds on hand and await a further realizing of assets, and to make a future and final distribution. The executor Smith filed a final account.

Oppositions were filed by the executors to the accounts of each, and there were numerous other oppositions by the heirs.

Collins and Mrs. Allen, executors, propose to turn over to the latter the *residuum* of the estate. The heirs, including the executor Ogden Smith, oppose the account on the ground that as to the *residuum* the testator died intestate, and it should be distributed among those to whom the law gives it. Mrs. Allen, claiming the residue, opposed the account. The division of the plantation is contested between the children of Thomas H. Allen and the children of Mrs. Smith, brother and sister of the deceased. There were four Allen and five Smith heirs. Hence the contention of the former that one-half of the plantation absolutely should go to them, as they deny the bequest to the Smith heirs, and that if they are

entitled to a part of the plantation as legal heirs that the half of the plantation should be divided *per stirpes* and not *per capita*.

The executors concur that each of said heirs should receive one-ninth of the half of the plantation. Collins and Mrs. Allen, executors, propose to pay to Mrs. Cragin for her boys a sum sufficient to educate them. Smith, the executor and one of the heirs,
163 opposes this item in the will because of its uncertainty. The executor Smith differs with the other executors as to the disposition of the crop of 1894, the former contending that the proceeds should be turned over to the heirs as a part of the estate undisposed of by the testator, and the three nieces named in the will claim a part of the *residuum* as heirs. Their quality as legal heirs is denied by the executors. Two of them agree that they are entitled each to five hundred dollars, the other that this sum must be distributed among them.

The Turner heirs oppose the claim of the three nieces, and, as a consequence of the rejection of their claim, they allege they are entitled to interest as part of the *residuum* to the extent of one undivided third jointly. They oppose the classification of the old iron, coal, corn, and hay as immovable by destination, and there are many other items in the account of the executor Smith objected to by them.

The district judge consolidated the two accounts and the oppositions filed and treated them as one proceeding.

The judgment of the district court was that the bequest to Mistress Bettie Allen of all testator's corporal movables did not entitle her to the money found in his house at his death nor to the money in bank nor to the sugar on plantation at testator's death after the payment of the special legacies and debts of the estate, and that these amounts formed an unwilled portion of the estate to be distributed to the heirs-at-law of the deceased, leaving out the heirs that were disinherited, the court deciding that the testator's three nieces were disinherited, with the exception of a legacy of five hundred dollars left to each of them.

The lower court further sustained the legacy to give Mrs. Cragin's two small boys an English education, fixing the amount to
164 be paid her, and that the Rienzi plantation was devised one-half to Mistress Bettie Allen and the other half was to be divided into ninths, one-ninth going to each of the Allen heirs and to each of the Smith heirs.

It further holds that the crop of sugar and molasses made on the Rienzi plantation in the year 1894, which Ogden Smith proposed to account for (though unsold), could not be accounted for till sold, but that, as the question of its distribution was raised, it should be divided among the devisees of the plantation in the proportion they took said plantation and not to Mistress Bettie Allen, as she contended for in her opposition.

The lower court upheld the payment of attorney's fees as proposed by Ogden Smith, executor.

And, finally, it decided that the account of Ogden Smith, executor, was not a final account, but that the final account must be

recast, and that the question of the distribution of the bounty money due by the United States Government for the sugar made during the year 1894 should be left open for decision when the money was collected and proposed to be distributed by the executors.

From this judgment the executors, W. F. Collins and Mrs. Bettie Allen, the Allen heirs and Mrs. Bettie Allen, personally obtained orders of appeal.

The first question presented is, is Mrs. Allen appointed residuary legatee under the will?

Where general expressions stand immediately associated with less comprehensive words, they have been sometimes restricted to articles *ejusdem generis*, the specific effects being considered as denoting the species of property which the larger term was intended to comprise.

Jarman on Wills, p. 352, vol. 2.

165 The circumstance of a specific or pecuniary legacy being given to the same legatee, or of the general bequest being followed by particular portions of the personal property to other persons, has been considered to favor the supposition that such bequest was not to comprise the general residue.

Id., p. 354, vol. 2.

And it has been often—we may say invariably—held that a general description of property or description of the class or kind, preceded or followed by words of narrower import if the bequest is not residuary, will be confined to species of property of same kind with those previously described. The adoption of the more comprehensive meaning would have the effect of rendering the superadded expression nugatory and make the testator employ additional language without any additional meaning.

Jarman on Wills, 356.
15th Ind., 326.
2nd Bl. Comm., 384 *id., or*
Lartigue *et al. vs.* Duhamel's Executor, 4th N. S., 665.

The confection of the will shows that the testator was ignorant of grammar and orthography and the most elementary rules of composition. His uncouth language, inapt and confused expressions, must be overlooked and construed into logical conclusions and consistent expressions in the effort to ascertain his intention, which must govern, unless the thing to be done is opposed to some inflexible rule of law.

The rules for the interpretation of testaments are: 1st, the technical import of words is not to prevail over the obvious intent of the testator; 2nd, when technical words are used by the testator, or words of art, they are to have their technical import, unless

166 it is apparent that they were not intended to be used in that sense; 3rd, the intent of the testator is to be determined from the whole will; 4th, every word shall have effect, if it can be done

without defeating the general purpose of the will, which is to be carried into effect in every reasonable method.

C. C., 1712.
Succession of Blakemore, 43rd Ann., 850.
State of Louisiana, etc., *vs.* Executors of McDonogh, 8th Ann., 171.
Williams *vs.* Western Star Lodge, 38th Ann., 620.
Succession of Bobb, 41st Ann., 250.
City *vs.* Hardie, 43rd Ann., 253.
16th Ind., 221; 11 Pick., 257, 378; 13 Ind., 41–44; 2nd Met. Mass., 191, 194; 12 Johns., 389; 8th Ind., 3, 306; 5 Mass., 500; 5th Denio, 546; 3rd Pick., 362; 2 Md., 82; 1st Jarman, Wills, 404–412.

In the will he gives to his wife all his corporeal movables, and follows this general disposition by a specific enumerations of the immovables, such a- furniture, bedding, linen, silver plate, china-ware, etc., all of his stock of cattle, horses, and carriages. It will be noticed that after the designation of furniture, etc., the sentence stops, and then in another sentence he disposes of a different species of corporal movables. There is no ambiguity in this part of the will. No construction can be put upon the language than that the testator intended to limit the corporal movables to those designated. The words reviewing the general description of the property seem to have been used advisedly by the testator. That he did not intend that his entire personal estate should pass by the general description of corporal movables is evident from his limiting its application in the words descriptive of particular species of property, and the further fact that large portions of his personal estate are devised to particular legatees;
167 and, again, to the wife he gives other corporal movables, such as one-half of all tools, mules, etc. He speaks of the legacy to his wife of one-half of the Rienzi plantation a second time and uses the expression that she could have one-half of everything belonging to Rienzi except a claim of one hundred thousand dollars due, as alleged, by the Federal Government, and the other property he says he will dispose of further on. He had disposed of the Rienzi plantation, all the immovable property he possessed. His other property, then, was movable, a part of which he had given to his wife, and the other property he proposed to dispose of thereafter. The other property could only have been that which he had not disposed of. It may have been his intention, as is usual in wills, to make his wife the residuary legatee at the closing of his will; but, unfortunately for her, he failed to do so, and as to this part of his estate he died intestate. The presumption is that the testator intends to dispose of his entire estate and not to die partially intestate. Sometimes slight expressions, if they can be construed as his intention to do so, are seized upon as the means of carrying out the supposed intention of the testator.

We have carefully studied the expressions in the will to ascertain

if anything could be gleaned by which the testator's intention could be inferred as to the disposition of the *residuum* of his estate.

We are able to find none, except we are to adopt the construction of the wife's counsel and presume that the testator, who had lived so long on the Rienzi place that he had identified it with his entire fortune and considered everything which had been made upon it as a part of Rienzi; but, even then, the whole general estate would not go the wife, as he says, "I will that my wife do have
168 one-half of everything belonging to Rienzi." In case a favorable opportunity is not afforded for the sale of the place, he says his wife shall be credited with the proceeds; but this expression, unexplained by others and standing alone, will not justify the interpretation that she was intended as the residuary legatee. It is an evidence, however, of the intention of the testator that his wife was to receive the net proceeds of the crop until the plantation finally passed from the control of the executors.

No particular form of words, it is true, is requisite to constitute one a residuary legatee. It must appear, however, to be the intention of the testator that the residuary legatee shall take the residue of the estate after payment of debts and meeting all the appointments of the will.

Wm. Ex., 1310 *et seq.*

Jarman, vol. 3rd, page 2, says: "In some instances, however, in favor of the restricted construction founded on subsequent expression, description of a particular species of property has not been allowed to prevail against the force of the previous general words." In the cases cited for this textual declaration there was some expression as to the disposition which showed that it was the intention to pass the residue of the estate.

Thus in Berrett *vs.* Bachelor, 1st Ves., 63, there was, after the previous general words, the expressions "and other, not before bequeathed, *goods* and *chatteis* that he should be in possession — at the day of his decease."

In Cambell *vs.* Prescott, 15th Ves, 505, the testator gave to his two sons all his sugar-house, cupola, and merchandize, stock, with jewels, plate, household goods, furniture, *and all effects whatsoever.*
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In Michel *vs.* Michel, after a bequest of linen, china, household goods, and furniture, the words were followed by "and effects he shall die possessed of."

And in the other cases cited there are expressions such as "and *all his other effects*, or whatever else I may then be possessed of at my decease," "his wines and property in England." In all these cases "the mere enumeration of particular articles, followed by a general bequest, did not of necessity restrict the general bequest, because a testator often threw in such specific words, and then wound up the catalogue with some comprehensive expression for the very purpose of preventing the bequest from being so restricted."

Jarman, 362.

Mr. Jarman says, page 344: "These cases indicate the disposition of the judges of the present day to adhere to the sound rule which gives to words of a comprehensive import their full extent of operation unless some very distinct ground can be collected from the context for considering them as used in a special and restricted sense."

"It is to be observed, however, that in all the preceding cases there was no other bequest capable of operating on the general residue of the testator's personal estate if the clause in question did not. Where there is such a bequest it supplies an argument of no inconsiderable weight in favor of the restricted construction which is then recommended by the anxiety always felt to give to a will such construction as will render every part of it sensible, consistent, and effective."

There was no expression in the will following the particular description of the property after the general description of "all
170 corporeal" movables to indicate that the wife was to have the *residuum* of his personal estate, nor is there any indications of any intent to make any other legatee the recipient of this *residuum*. We are forced to the conclusion from a consideration of the entire instrument that he intended the balance of his personal estate to go to his legal heirs—a disposition in doubtful meaning which the law favors.

The will speaks from the death of the testator, that being the point of time at which it becomes operative (21st Conn., 550, 516), unless the language used, such as the word now, or a verb in the present tense, which requires it to be taken at the time it is used.

1st Jarman, Wills, 318.

But it will receive the former interpretation if it can reasonably be made to bear it (2nd Cox Ch., 384). It is plain from the terms of the will that the testator intended that the plantation should be sold and the proceeds distributed as directed by him. Speaking from the time of his death for the future sale of the property, he said to his executors that they should sell the Rienzi plantation and distribute the proceeds, and until they did sell it the proceeds should go to the wife. The legatees could not sue immediately after the death of the testator for a partition in kind, as this would have been contrary to the positive mandate of the testator. The plantation was directed to be sold in the most positive language. The legatees, then, were only interested in the proceeds of the sale. The net proceeds belong to the wife from the time of the death of the testator until the sale of the place. No other reasonable interpretation can be given to the language of the testator. If the plantation
171 should have been sold with the growing crop it would have passed with the place and increased the proceeds.

So long as the plantation remained in the hands of the executors, Mrs. Allen was entitled to the proceeds of the crops. If not sold in accordance with the directions of the testator, it is only at the moment of delivery to the legatees, if they choose to hold it in indi-

vision, that the growing crops pass to them a part of the immovable.

The testator says that "I will that my wife to have one-half of everything belonging to Rienzi." This declaration is explanative of the desire that his wife should have one-half of the plantation, mules, tools, etc. The wife, under this declaration, is entitled to one-half of everything on the plantation, attached to the same, immovable by nature or by destination or by the object to which they are applied. C. C., art. 462 *et seq.*

Everything on the plantation placed there for its service is immovable by destination if it is essential for the gathering of the crops, preparing the same for market, or for the improvement of the quality of the land, or to feed the stock and cattle necessary for working the same.

The manufacture of sugar is the preparing of the crop of cane for market. Coal is an essential thing for the running of the machinery of the sugar-house. Although not mentioned in the code, it is to be classed, if destined during the grinding season for the service of the mill, as immovable by destination. The hay, corn, fodder, and coal were placed on the plantation for the use of the place and consumed in the cultivation of the plantation in working the crop and preparing the same for market. The legal heirs are not entitled to the value of the same. The timber and the old iron were not essential for the use of the plantation and were not employed in the cultivation of the same. They therefore fall into the *residuum*.

Immediately after the legacy of the one half of the plantation and a claim the testator held against the Federal Government is the language: "And to the five children of my sister Cynthia A. Smith, Gaston Smith, Fred. W. Smith Jr. Mrs. Nellie Huchens, Ogden Smith and Thomas A. Smith." There is no period after the
172 bequest to the Allen heirs, but this, as a distinct sentence, follows. We know that the testator was not familiar with the English language; that he was deficient in the use of words, used capitals indifferently, and was not proficient in composition. That he intended that his sister's children should participate in this bequest is evident from the subsequent language in the will bequeathing to Fred. W. Smith his note for five hundred dollars as "part of his share heretofore given him." He had given no "share" except in the bequest to the Allen and the Smith heirs. He evidently had in his mind a bequest to his sister's children.

Following immediately the bequest to the families of his brother, Thomas H. Allen's four children, is the legacy to the children of his sister, and the testator intended to make a continuous sentence and to provide for his sister's children as liberally as he had done for those of his brother.

We are satisfied from the entire context of the will that the testator intended that his sister's children should participate in the legacy of half of the plantation and the claim against the Government of the United States.

When the reading of a whole will will produce a conviction that

the testator must necessarily have intended an interest to be given which is not bequeathed by express and formal words, the court will supply the defect by implication, and so mould the language of the testator as to carry into effect, as far as possible, the intention which it is of opinion that he has on the whole sufficiently declared. Metcalf *vs.* First Parish in Farmington, 128th Mass., 375; Boston Safe Deposit & Trust Co. *vs.* Coffin *et als.*, 8th Lawyers' Reports, p. 748; Post *vs.* Huger, 38th N. Y., 599.

173 Punctuation must give way whenever it interferes with the proper and reasonable construction of a will. 8th Lawyers' Reports, p. 744, notes.

The devise to his brother's children should be connected with the device to his sister as one continuous sentence.

He gives to the families of his brother's four children. They do not take, therefore, *per capita*, but *per stirpes*. The number or the names of the children are not mentioned. In the bequest to the sister's children there is no language used which would justify the inference that the testator intended that they should receive differently from the families of his brother's children. The legacy is to the five children of his sister, and, construing this in connection with the bequest to his brother's children's families, it is clear to our mind that the testator intended that these five children should be grouped as a family and take *per stirpes* as the children of his brother's families. Each set of children is therefore entitled to one-fifth.

Hyatt *vs.* Prigsley, 23rd Barbour, 209.

To the three nieces named in the will it says that they are to receive five hundred dollars more in cash and have no interest in any other claim. They have received five hundred dollars each, and the legacy to them is plain in its meaning, that each was to receive five hundred in addition to that already given to them by the testator in his lifetime. They are to have no interest in any other claim. As to the *residuum* of the estate the testator died intestate. They could have no interest in any claim given to other legatees. They could could possibly lay claim to nothing else than the *residuum* of the estate. The testator must have referred to

174 this, for there is no other fund upon which the legatees could assert any right. They are therefore excluded from a participation in the *residuum* of the estate.

Although opposition was made for uncertainty of that part of the will which directs that a good education should be bestowed upon the two boys of Mrs. Cragin, we do not find the matter discussed in the briefs of counsel. We presume therefore that it has been abandoned; but as the account of the executors are not final and the question may hereafter be raised, we will pass upon this part of the will.

The rule in regard to the inadmissibility of parol evidence to vary, contradict, or to render intelligible the words of a will is not essentially different from that which obtains in regard to contracts. It may be received to show the state of the testator, the nature and

condition of his property, his relations to the contestants, and all the surrounding circumstances, but this is done to place the court in the condition of the testator, in order, as far as practicable, to make them the more fully to understand the sense in which he used the language found in his will.

1st Greenleaf, Ev., par. 287–289.
Jarman, Wills, 349, notes.

But parol evidence is not admissible to supply any words or defects in the will.

Id.
23rd Barb., 285.
27th Ala., 489.

In this case there is no reason to supply any words or defects in the will. There is no doubt as to the intention of the testator or to the subject-matter of the bequest.

The testator has defined his object with reasonable certainty, and the court can from the data furnished by him ascertain the amount necessary to carry into effect his intention. The judge heard
175 evidence as to the amount necessary to educate the two boys of Mrs. Cragin, and in thus acting he did not vary or avoid the intention of the testator or in any way contradict any part of the will.

McCorn *vs.* McCorn, 100 N. Y., 511.
13th West Rep., 614.
12th West Rep., 857.
144 Mass., 164.
59 U. S., 385.

We find no reason to disturb the rulings of the district judge on this issue; nor do we find any error in his ruling as to the attorneys' fees and the commissions of the executors. The succession is in no condition for final settlement. The crop of 1894 has not been disposed of and the sugar bounty claim uncollected.

Succession of Gardere, recently decided, 48th Ann.

The judgment appealed from is amended so as to give to Mrs. Bettie Allen the net proceeds of the crop on Rienzi plantation for the year 1894–1895 and to one-half of the plantation one-fifth interest in same to each of the families of R. H. Allen, Jr., T. H. Allen, Jr., Harry Allen, one-fifth to Mrs. Latham, and one-fifth to the children of Mrs. Cynthia Smith.

In all other respects the judgment is affirmed; the succession to pay costs of appeal.

176 UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

Succession of RICHARD H. ALLEN. No. 12331.

Proceedings Had in the Supreme Court of the State of Louisiana.

Transcript of Appeal. Filed November 24th, 1896. (Signed) Paul E. Mortimer, Deputy Clerk.

Succession of RICHARD H. ALLEN. No. 12331.

Answer to Appeal on the Part of J. B. and W. A. Turner, Opponents and Appellees.

Filed 27th November, 1896.

Now, by the undersigned counsel, come into this honorable court J. B. Turner and W. A. Turner, appellees herein, and for answer to the appeals taken by W. F. Collins and Mrs. Widow Bettie Allen, executors, and also by Ogden Smith, co-executor, respectively, aver and allege as follows, viz:

1st. That the judgment of the eighteenth judicial district court for the parish of Lafourche rendered and signed in chambers by consent on November 9th, 1896, is correct and should be affirmed in so far as it distributes the bounty money collected from the Government of the United States by the executors of this estate
177 equally by thirds between the three sets of heirs-at-law of the deceased not excluded by the express terms of the will, viz, one-third to the Smiths, one-third to the Allens, and one-third to the Turners (these respondents), and that said judgment should be upheld and affirmed by this honorable court on appeal in this regard.

2nd. That said judgment of said district court is also correct in so far as it distributes among the said three sets of heirs-at-law not excluded by the will, viz., the Smith heirs, the Allen heirs, and the Turner heirs (these respondents), by thirds equally, the sum of two thousand and seventy-two $\frac{43}{100}$ dollars ($2,072.43) reserved by said executors in their prior settlement and payment made to said heirs on account on June 12th, '96, and a further sum of three thousand seven hundred and twenty-five $\frac{22}{100}$ dollars ($3,725.22) due by Mrs. Widow Bettie Allen on her personal account for moneys drawn by and advanced to her from the estate of the late Richard H. Allen.

3rd. That in other respects the said judgment of said district court is erroneous and contrary to law and should be amended and modified and should be made to conform to the final account of the co-executor, Ogden Smith, and to the oppositions filed by these appellees to the final account of the other two executors, W. F. Collins and Widow Bettie Allen.

4th. That said final judgment of said district court is particularly

erroneous and contrary to law and to the evidence and aggrieves these respondents & appellees, in so far as it fails to return to the residuum of the estate the sum of four thousand four hundred and seven $\frac{79}{100}$ dollars ($4,407.79) paid by the executors for making the crop of 1894, after the death of Richard H. Allen, from the general mass of the estate and from the unwilled cash which belonged to the heirs-at-law of the death (the Smiths, the Allens, and the Turners by thirds), and respondents aver that said sum of $4,407.79 should be restored, out of the crop of 1894 and its proceeds, to the general mass of the estate and to the unwilled cash belonging equally by thirds to the Smith heirs, to the Allen heirs, and
178 to the Turner heirs (these respondents). See tableau of Smith, executor, Rec., p. 20.

5th. That for similar reasons the judgment of said district court is erroneous & contrary to law and aggrieves these respondents & appellees, in so far as it fails to return to the general mass of the estate all expenses incurred during the year 1894 to make the crop of 1894 by the late R. H. Allen, and particularly the total amount of twenty-two thousand eight hundred $\frac{30}{100}$ dollars ($22,800.30), paid prior to his death by the late R. H. Allen. See tableau of Executor Ogden Smith, Rec., p. 25.

6th. That said judgment of said district court is erroneous and illegal & aggrieves respondents, in so far as it sustains the plea of *res judicata* as to the item of taxes of the plantation for the year 1894, amounting to the sum of $1,348.81.

7th. That said judgment of said district court is erroneous & illegal and aggrieves respondents & appellees, in so far as it gives to the widow Bettie Allen anything more than the "*net proceeds*" of the crops of Rienzi plantation for the years 1894 and 1895, and that said judgment should be so modified and amended as to restore to the mass of the estate which goes to the legal heirs by thirds (your respondents, the Turner heirs, being entitled to one-third) all the expenses incurred for making the crops of 1894 and 1895 respectively for the entire year paid before as well as after the death of R. H. Allen.

Wherefore respondents and appellees pray that the judgment appealed from be amended in accordance with the foregoing and with the oppositions of these opponents on file herein, and be made to conform to the final account presented by Ogden Smith, co-executor, and that in all other respects said judgment be affirmed, and that this honorable court affirm, as thus amended and modified, the said judgment appealed from, with costs.

Respondents and appellees pray for all general & equitable relief.

(Signed) HENRY CHIAPELLA,
Attorney for J. B. and W. A. Turner,
Respondents and Appellees.

179 Succession of R. H. ALLEN. No. 12333.

Answer of J. Lewis Aucoin, Administrator.

Filed 26th December, 1896.

Now into this honorable court, by his undersigned counsel, comes J. Lewis Aucoin, administrator of the succession of Thos. H. Allen and appellee herein, and for answer to the appeal herein prosecuted on behalf of W. F. Collins and Mrs. Bettie Allen, as executors of this succession, with respect shows—

That the judgment herein rendered by the honorable the 18th judicial district court in and for the parish of Lafourche should be amended in so far as the same adjudged Mrs. Bettie Allen to be entitled to the proceeds of the crop of 1894 after deducting the expenses incurred by the executors after the death of the testator in saving the crop. Respondent avers that all of the expenses of making the said crop, including those preceding the death of the testator, should be deducted from the gross proceeds of the said crop, and the remainder, the net proceeds, turned over to Mrs. Allen.

Wherefore respondent prays that the judgment of the 18th udicial district court be so far amended; otherwise that the same may be affirmed.

And, as in duty bound, respondent will ever pray, &c.

(Signed) FENNER, HENDERSON & FENNER,
Of Counsel.

Succession of RICHARD H. ALLEN. No. 12331.

Answer to the Appeal of the Executors by Opponents Mrs. Boyle, De Berry, & Allen.

Filed January 4th, 1897.

180 Now into this honorable court, by their undersigned counsel, come Mrs. Jennie Boyle, Bettie De Berry, and Allen Baker, opponents and appellees in this case, who, as answer to the appeal of the executors herein, say that there is error to their prejudice in the judgment appealed from.

Further answering, opponents and appellees aver that the funds received by the executors from the Government of the United States, under act of Congress passed and adopted in the latter part of March, 1895, was not due to R. H. Allen or to his estate after his death, and forms no part of the assets of said estate nor of the residuum thereof.

That the said R. H. Allen, at the date of making his will and at the date of his death, had no claim against the Government which he could enforce or could have been enforced by the executors of his estate.

That the distribution of said funds is not governed by the provisions of the will of said deceased, descends directly to the oppo-

nents and their coheirs, and is simply held in trust by said executors for them.

That the clause in the will of said deceased which has been heretofore construed as excluding opponents from participation in the unwilled property of the testator has not concluded them beyond the residuum of the estate such as it was at the date of the death of said testator; that their capacity of heirship and their right to demand and receive from gratuities created by the Government under special law enacted after the death of the testator has not been destroyed.

Wherefore respondents pray that the judgment appealed from be amended by maintaining their opposition to the final accounts of said executors for the amount set forth in their oppositions.

And for general relief, &c.,

(Signed) E. D. LE BRETON,
L. DE POORTER, *Att'ys.*

181 *Cause Argued and Submitted.*

(Extract from the Minutes.)

NEW ORLEANS, TUESDAY, *January 5th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

Succession of RICHARD H. ALLEN. No. 12331.

This cause came on this day to be heard and was argued by counsel. Mr. Taylor Beattie opened for Mrs. Bettie Allen and William F. Collins, executors, appellants; Mr. Charles E. Fenner replied on behalf of the legal heirs, appellees, followed by Mr. Henry Chiapella, representing J. B. & W. A. Turner, appellees, and by Mr. Beattie, and Mr. Clay Knoblock, on behalf — Ogden Smith, executor and appellant, closed the argument, and, the cause having been submitted by counsel upon the briefs for the respective parties and the papers now on file, the court took the same under advisement.

Opinion of the Court.

Filed April 12th, 1897.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *April 12th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

182 Succession of RICHARD H. ALLEN. No. 12331.

Appeal from the eighteenth judicial district court for the parish of Lafourche.

This litigation is supplementary to and grows out of a previous opinion of this court which was rendered in a suit of same title as this and which is reported in 48th Ann., 1036, and to which we refer for a complete statement of the issues involved and the conclusions at which we arrived, the chief purpose and object thereof being to determine the scope and meaning of the will of the deceased.

The following extract from our opinion in that case will illustrate to a certain extent the scope of the present controversy, namely:

"The succession is in no condition for final settlement. The crop of 1894 has not been disposed of, and the sugar bounty claim is uncollected. * * * The judgment appealed from is so amended as to *give Mrs. Bettie Allen the net proceeds of the crop on the Rienzi plantation for the year* 1894 and one-half the plantation and one-fifth interest in same to each of the families," etc., enumerating them.

In all other respects the judgment appealed from was affirmed.

But, on the application for rehearing, the court made this explanatory statement, viz:

"The applicants have misunderstood our decree. It does not say, nor was it intended to convey the impression, that the funds ready for distribution should be withheld from those entitled to the same under the will. *The succession is to be continued in its administration until the payment of the bounty, when it will be distributed according to law.* All funds ready for distribution must reach their
183 destination without unnecessary delay." (Our italics.)

In that condition the cause was remanded to the lower court for further proceedings and final settlement in conformity to the views therein expressed.

When the cause went back to the lower court the executors W. F. Collins and Mrs. Bettie Allen joined in the preparation and filing of a final account, but Ogden Smith, the third executor, disagreeing with the two first named with respect to what was the correct interpretation to be placed upon our opinion, filed a separate final account of his own, in which he made a distribution different from that proposed by his associates.

These two final accounts resulted in sundry oppositions, the disposition of which is the subject of the present appeal.

The questions at issue can be most correctly stated and more understandingly apprehended by premising our recapitulation of them by a *résumé* of the district judge's views as they are set forth in his reasons for judgment, and for that purpose the following extracts therefrom will suffice, namely:

"By an agreement of record the two accounts are to be taken as answers or oppositions to each other and the whole matter is to be considered and disposed of in one decree.

"All the (legal) heirs have filed oppositions to the final account of W. F. Collins and Mrs. Bettie Allen (executors), opposing (their)

distribution of the *bounty money* (to the latter), alleging that it formed no part of the crop of 1894 or of the proceeds thereof and is unwilled, and (further) seeking to charge her with the portion of the *expense of the crop of* 1894 *incurred prior to the death of* (*the testator*), *and also with the deficit of the crop of* 1895."

He then states that all of the heirs except three concur in the account filed by executor Ogden Smith and pray for its homologation, while the three heirs excepted oppose that portion of same in which it is proposed to leave them out entirely in the distribution of the *bounty money*, alleging themselves to be entitled to
184 an equal distributive share thereof.

Then follows this statement, viz:

"The only questions before the court are questions of law, and the *first* one is, Does Mrs. Allen get the proceeds of the crop of 1894 *after deducting the expenses incurred by the executors, after the death of the testator, in saving the crop, or must the expenses incurred prior to the death of the testator be also deducted.* (Our italics.)

* * * * * * *

As a general proposition"—that the net proceeds are what remains after deducting *all* the costs of production—says the judge, "this is undoubtedly correct; but the expression of the supreme court in reference to the net proceeds of the crop *in this case* must be taken in conjunction with the provisions of the will on the subject, and be construed in the light of such provision."

He then observes that the account of Ogden Smith, executor, then before the court, made reference to the net proceeds of the crop of 1894 and proposed to distribute same among all the legatees "provided said legatees shall reimburse to the estate (the) expenses incurred to make and save said crop *since the death of the testator*, * * * amounting to $19,730.26;" and then stated that in passing upon that issue he adopted that view of the matter, and that it was when commenting thereon that this court used the expression "net proceeds," and decreed Mrs. Bettie Allen entitled to same under the terms of the will.

"But the question (as to) what are the net proceeds," says the judge, "beyond what was presented by the pleadings, was not passed upon by the court.

"The clause of the will under which the court gave the crop of 1894 to Mrs. Allen is in these words, viz:

"'As I fear property will be very low, I give my executors five years to work for a good price. In the meantime that they are waiting to sell, the place can be rented or worked so as to pay all taxes and other charges, any over that to go to Mrs. Bettie Allen's credit.'

185 "This language is plain and unambiguous. It provides for the future renting or working of the plantation to pay the taxes and charges incurred by the plantation while so rented and worked, and that the surplus of the rental or proceeds of (the) crop were to be turned over to Mrs. Allen; but it does not provide for or contemplate the payments of the debts contracted by the

testator himself prior to his death, whether for making the crop or not. The will speaks for the future and directs what the executors shall do in the management of the plantation, namely, rent or work it, so as to raise revenue to pay the taxes and charges while waiting for a better price and to turn over whatever profits are made in thus renting or working it to Mrs. Allen."

After an explanatory statement the judge adds:

"The language of the will too plainly provides for the *future* to admit of charging up against the crops debts contracted and in great bulk paid prior to his death. It is clear to my mind that the only charges against the crop of 1894" (which are to be deducted from the gross proceeds) "are the expenses incurred in saving and preparing the crop for market, fixed in the first tableau of executor Smith * * * at $19,730.26 and such further sum as may have been incurred in selling the property," amounting to $2.766.13.

He leaves out of consideration the question of deduction of State and parish taxes, which the opponents claim should also be deducted from the gross proceeds of the crop of 1894, because, in his opinion, they are covered by the plea of *res adjudicata*, same having been proposed for settlement on the first accounts, to be paid from the general assets and funds of the estate, and the judgment ordering the same to be so paid not having been disturbed by the decree of this court.

The judge then addressed his reasons to the claim of the executors Collins and Mrs. Allen to the effect that the deficit of $916.19 on the crop of 1895 should be paid from *the unwilled assets of the estate* going to the legal heirs on the theory that Mrs. Allen
186 never consented that the plantation should be worked and operated for her account in 1895, and then to the contention of the executor Smith, *contra*, and that of the legal heirs, that this deficit must be paid out of the crop of the *previous year*, 1894.

With regard to this proposition the judge says:

"I think the contention of the latter is well founded. The (provision of) the will already quoted contemplated that the place should be rented or worked by the executors pending sale and while waiting for a good price, in order to pay the taxes and other charges on the place, and that the surplus realized at the close of operations should be put to the credit of Mrs. Allen."

Dismissing the question of "net proceeds" with these ample remarks, he passed to the consideration of the "bounty money," and on that question he says:

"I am clearly of the opinion that the bounty money forms no part of the crop proper or the proceeds thereof. Though based on the crop as a means of calculation and conditioned on the production of the crop by the owner of the plantation under certain rules, it was a pure gratuity from the Government.

* * * * * * *

It does not, therefore, go to Mrs. Allen under the will, but to the heirs as an unwilled portion."

He then says that the three legal heirs to whom no legacies were made in the will claim their shares in the bounty money on the

ground that it was a gift from the Government, made *after* the death of the deceased, and consequently did not fall into his succession, but goes to the legal heirs of the deceased directly.

The judge then says:

"The bounty was given after the death of the deceased, but conditioned on his prior fulfillment of certain prerequisites prescribed by the McKinley bill, but the license was obtained and the equitable claim in payment of which the allowance of the Government was made had been created prior to the death of the testator.
187 The gift was to the testator or his estate and not to his heirs, and consequently formed a part of his estate.

"The three opponents named are not entitled to participate in the distribution, having been cut out by the terms of the will, and the bounty money, after deduction made of costs of collecting same, $321.70, and the executors' commissions therefor, $96.41, equal to $418.11, must be distributed among the remaining heirs."

He then makes the following statement as the basis of his judgment, viz:

"From gross proceeds of crop of 1894		$56,072.58
"Deduct expenses incurred since the death of testator, fixed at		22,496.39
"Leaving balance of		$33,576.19
"Deduct deficit on crop of 1895 as fixed in account of Smith, executor, and established by evidence	$748.19	
And executors' commissions	725.39	
		1,473.58
"Net proceeds of crops of 1894 & 1895		$32,102.61
"But she must restore amount already drawn and due to estate by her		3,725.22
"Balance due Mrs. Allen		$23,377.39

And to be paid her out of the proceeds of crop.

"Considering that the said account makes a correct showing of the unwilled cash and of the payments of the legacies and of the debts under the judgment heretofore rendered, except as to the item of reserved costs, $2,072.43, the item of amount due by Mrs. Allen, and the bounty, it is ordered and decreed that said final account of the executors, Mrs. Allen and W. F. Collins, be, and the same is, approved and homologated, except in so far as hereinabove amended, and as hereinafter amended as to the items just named.

"It is further ordered and decreed that as to these items the said account be reformed and recast as follows, viz:

"Amount reserved for costs as stated in said account	$2,072.43
"Amount recovered from Mrs. Allen	3,725.22
"Amount received from bounty	11,569.35
"Total	17,367.00

188 "Deduct therefrom—

"Costs attending collection of bounty.....	$321.70	
"Executor's commissions.....	96.41	
"Reserved for future costs.....	300.00	
		748.81
"Balance.....		$16,618.19"

Then follows the distribution amongst the heirs, which it will be unnecessary to detail.

From this judgment the following parties appealed, viz., the Smith heirs and the executors, Mrs. Allen and W. F. Collins.

In this court appear Mrs. Jennie Boyle, Bettie De Berry, and Allen Baker, *as appellees*, and make answer to the appeal of the executors and aver that the funds received by them from the Government of the United States under act of Congress in the latter part of March, 1895, was not due to R. H. Allen nor to his estate at his death, and forms no part of the assets of said estate nor of the *residuum* thereof.

That the said R. H. Allen, at the date of making his will and at the date of his death, had no claim against the Government which he could have suffered enforced or could have been enforced by his executors subsequently.

That the distribution of said funds is not governed by the provisions of the will of the deceased, but descends directly to the opponents as heirs, and is simply held in trust by the executors.

"That the clause in the will of said deceased which has been heretofore construed as excluding opponents from participation in the unwilled property of the testator has not concluded them beyond the *residuum* of the estate, such as it was at the date of the death of said testator; that their capacity of heirship and their right to demand and receive from gratuities created by the Government *under special laws enacted after the death of the testator* has not been destroyed."

Therefore they prayed that the judgment appealed from be so amended as to maintain their opposition to the final account of the executors.

189 The administration of the succession of Thos. H. Allen, as appellee, filed an answer to the appeal of the executors, Mrs. Allen and W. F. Collins, and prayed for an amendment of the judgment appealed from, so as to deduct from the gross proceeds of the crop of 1894 all the expenses of making the said crop, including those preceding the death of the testator, as well as those which were incurred by the executors in its administration and management, after his death.

The opponents, J. B. Turner and W. A. Turner, also appear as appellees and make the following answer to the appeal of the executors, viz:

That the judgment appealed from should be affirmed to the extent that it distributes the bounty money equally between the three

sets of heirs-at-law, excluding those from participation therein who were excluded by the express terms of the will.

That said judgment is also correct in so far as it distributed among the three sets of heirs-at-law not excluded by the will the amount reserved by the executors in prior settlement, the amount of payments made to heirs on account, and the further sum found due by Mrs. Allen for moneys drawn in advance.

But they aver that in other respects the said judgment is erroneous and should be modified and amended and made to conform to the final account of the co executor, Ogden Smith.

"That said judgment is particularly erroneous in not having ordered to be returned to the *residuum* of the estate the sum of $4.407.79 paid by the executors in making the crop of 1894 after the death of Richard H. Allen from the general mass of the estate and from the unwilled cash which belonged to the heirs-at-law at the date of his death * * * and out of the crop of 1894."

Also that said judgment is erroneous in the further particular that it failed to order returned to the general mass of the estate all expenses incurred in 1894 to make the crop of that year, and particularly the sum of $22,800.30 paid and expended by the testator during his lifetime.

Also that it is erroneous in having sustained the plea of
190 *res adjudicata* and in some other minor particulars.

From the foregoing synopsis of the reasons for judgment and of the pleas of opponent we take the questions for our decision to be the following, viz:

1st. Whether the account of Mrs. Allen and W. F. Collins, executors, awarding Mrs. Bettie Allen the net proceeds of the crop of 1894, less the expenses of its cultivation and manufacture which were incurred by the executors *subsequent* to the death of the testator, should be approved, or should the theory of the opponents that she be only allowed the net proceeds thereof, after deducting *all expenses* incurred during the entire year, be maintained?

2nd. Whether the aforesaid account awarding the "bounty money" to Mrs. Bettie Allen, as special legatee under the will, on the theory that it formed a part of the net proceeds of the crop of 1894 on the Rienzi plantation, should be approved, or should the theory of the opponents to the effect that same formed no part of the crop nor of the proceeds thereof, but, on the contrary, constituted an unwilled asset of the testator, which at his death passes directly to them as the legal heirs of the *residuum* of his estate, should be maintained?

3rd. Whether the contention of the three nieces who were disinherited by the will, to the effect that they are entitled to a share in the "bounty money" on the ground that it was a gift from the Government made *after* the testator's death, and consequently did not fall into his succession nor constitute a part of the *residuum* thereof, but descended to the legal heirs directly, should obtain, or is the contention of the legal heirs, if the bounty money be decided not to go to Mrs. Bettie Allen as special legatee, that said nieces

are cut off by the terms of the will and entitled to no share therein correct, and should it prevail?

4th. Whether the said account proposing that the deficit of $748.19 on account of the crop of 1895—which was made and gathered under the superintendence of the executors—should be paid from the unwilled assets of the estate going to the legal heirs,
191 on the theory that Mrs. Allen never consented that the plantation should be cultivated for her account, should be approved, or should it, as the legal heirs contend, be paid from the proceeds of the crop of 1894, going to Mrs. Bettie Allen as special legatee?

5th. Whether the amount claimed in reimbursement of taxes paid on real estate of the testator *are* covered by the former account and concluded by the plea of *res adjudicata* filed by Mrs. Allen and W. F. Collins, executors, or is same open for examination and judgment on the final account before us?

In addition to the foregoing, the attorneys of Mrs. Bettie Allen, special legatee, object to the charge of $725.39, amount of the commissions of W. F. Collins, executor, being deducted from the net proceeds of the crop of 1894—insisting that the same is a charge against the legal heirs, and not against her as legatee.

We will take these propositions without regard to the order they were taken in the argument or presented in the foregoing *résumé*.

I.

What is the true meaning and import of the phrase employed in our opinion, "the net proceeds of the crop"?

In our opinion in the former case we simply said:

"The judgment appealed from is so amended as to give Mrs. Bettie Allen the net proceeds of the crop of 1894, etc.," but the clause of the will which superinduced that interpretation was the following, viz:

"As I fear property will be very low, I give my executors five years to work for a good price. In the meantime that they are waiting to sell, the place can be rented or worked so as to pay all taxes and other charges; any over that to go to Mrs. Bettie Allen's credit."

As the judge *a quo* observed, this language evidently pointed to and provided for the future, and it had no effect until the testator's death. When the will was made, the time of the testator's death was unknown; consequently no time when it would go into
192 effect could have been fixed or contemplated. Hence the testator gave general directions to the executors of his will as to the manner in which they should conduct and manage the estate when it should come under their control after his death. In view of the fact that the price of property was ruling low at the time he made his will, he gave them a period of five years within which to make sale of his plantation; and, further providing for the contingency of delay in effecting a sale, he authorized them to either rent or work same, so as to pay all taxes and charges. And

in this connection the testator declared that "any over that (should) go to Mrs. Bettie Allen's credit."

To our minds the conclusion is clear that the will contemplated and dealt with the renting or cultivation of the plantation *after* the death of the testator and during such a period of time as it might remain under the administration of the executors pending sale; that, as a necessary consequence, the taxes and other charges to which the testator referred were those to be incurred during their incumbency, and it is therefore obvious that it was the resulting balance, after their deduction, that the testator desired his surviving widow should have.

He contemplated that these planting operations might continue for five years, and should that have been the case she would have been entitled to the resulting balance of each year's operations; but the date at which the expenses were to *begin* was evidently that at which the administration of the executors *commenced*, and only those incurred during their administration should be deducted from the proceeds of the crops, in order to ascertain the net balance thereof, including the expense of making the sale.

It is to the terms and conditions of the testament that our previous opinion relates when it mentions the net proceeds of the crop of 1894, and not to the net proceeds of a crop, taken in the ordinary acceptation of the term.

Had the testator intended that the expenses he had incurred during his lifetime should be deducted or accounted for, as debts and expenses of the crop, he would have doubtless made some
193 definite statement in his will to that effect; but he did not do so.

Our conclusion is that in this respect the account of the executors, W. F. Collins and Mrs. Allen, is correct.

II.

The foregoing argument, in our opinion, disposes of the question of the deficit on account of the crop of 1895, as it was cultivated and manufactured under the superintendence of the executors, and it necessarily followed the destination of the same provision of the will as the proceeds of the crop of 1894.

As the crops grown on the plantation pending the sale were, by the mandate of the will, to be turned over to Mrs. Allen as a particular legatee after all expenses were paid, the legal heirs must be relieved of the burdens it has occasioned.

It follows necessarily that this deficit is not a charge against the unwilled portion of the testator's estate, and for the same reason it is not a charge against the general estate.

In this respect our conclusion is that the account is erroneous.

III.

The claim for bounty had not been collected when the succession was last before us. It was a gratuity from the Government, notwithstanding it was based upon an estimate of the crop as a means

of calculation and predicated upon the production of a crop by the owner thereof under rules and regulations which were established by the Treasury Department.

The allowance of the bounty was by the Government conditioned on the fulfillment by the deceased of certain prerequisites, though payment of it was not made until after his death and subsequent to the filing of the executors' provisional accounts.

The equitable claim of the deceased to the bounty had been created during his lifetime and the license obtained and all conditions precedent had been complied with, though no mention of it was made in the will.

It seems quite clear to our minds that the bounty money,
194 which was collected from the Government by the executors, formed no part of the crops of 1894 and 1895, nor of their proceeds. It was not *in esse* at the time those crops were grown and gathered.

The executors did nothing but make the necessary proofs preparatory to its collection and receive payment of the money. It must, consequently, be classed as an unwilled asset of the deceased, and not as part of the net proceeds of the crop of 1894, passing, under the will, to Mrs. Bettie Allen.

The legal principle involved is *res nova* in a great measure, and but few authorities applicable thereto are available.

In Delogny *vs.* Creditors, 48th Ann., 488, there was a somewhat similar question discussed and decided. In that case the judge *a quo* had ordered that the bounty money should be applied to the credit of a mortgage the insolvent had given to his commission merchants, and of this part of his decree we said:

"As relates to the pledge the facts are that the mortgagor bound himself to pay the bounty of the Government to the creditor immediately after the receipt of the amount, just as if the bounty had been a portion of the proceeds of the plantation. * * *

"The bounty was not delivered at the time the attempt was made to pledge it as an additional security for the debt. It was collected from the Government by the syndic some time after the act of mortgage had been executed. It is hardly necessary to cite authority in support of the proposition that delivery is an essential to secure a pledge. * * *

"The bounty was not a portion of the proceeds of the crop; it was no part of the crop.

"We know of no principle of interpretation under which it is possible to hold that the bounty was delivered as required, and came within the provisions of the statute relative to pledge as a security."

Taking that case as an illustration, it necessarily results from the argument that the bounty did not in the instant case consti-
195 tute a part of the crop. As it did not constitute a part of the crop of Delogny, possession of which passed to his mortgagee as a pledge, so in the instant case the bounty did not constitute a portion of the surplus of the proceeds of the crops of 1894 and 1895, over and above their expenses, which passed by the will to Mrs. Allen; or, in the language of the district judge, "it does

not go to Mrs. Allen under the will, but to the heirs as an unwilled portion."

The history of congressional legislation on the question of revenue and bounty on sugar confirms us in the correctness of this conclusion.

By the act of October 1st, 1890, known as the tariff act, it was declared that from and after the first of July, 1891, and until the first of July, 1905, there shall be paid "to the producer of sugar * * * a bounty of two cents per pound * * * under such rules and regulations as * * * the Secretary of the Treasury shall prescribe."

The condition prescribed was that "the producer of said sugar to be entitled to said bounty shall have first filed prior to the first of each year with the Commissioner of Internal Revenue a notice of the place of production, * * * with an estimate of the amount of sugar proposed to be produced in the current or next ensuing year, * * * and an application for a license to so produce, to be accompanied by a bond in a penalty and with sureties, to be approved, * * * conditioned that he will faithfully observe all rules and regulations that shall be prescribed for such manufacture and production of sugar."

The act further provided that "the Commissioner of Internal Revenue, upon receiving the application and bond hereinbefore provided for, shall issue to the applicant a license to produce sugar," but for a period of one year only.

And, further, that for the payment of the bounty "the Secretary of the Treasury is authorized to draw warrants on the Treasurer of the United States for such sums as shall be necessary," etc.

On the 15th of August, 1894, another act of Congress was received by the President, and, in default of his approval, became a
196 law on the twenty-eighth of that month, the purpose and effect of which was to repeal the previous bounty provision of the revenue law and make it "unlawful to issue any license to produce sugar or to pay any bounty for the production of sugar of any kind under said act."

In this condition the question remained until the Congress passed another act, bearing date March 2nd, 1895, making appropriations for sundry civil expenses of the Government for the fiscal year 1896, which, amongst other things, provided "that there shall be paid by the Secretary of the Treasury to those producers and manufacturers of sugar * * * who complied with the provisions of the bounty law * * * a bounty of two cents a pound on all sugars * * * manufactured and produced by them previous to the 28th of August, 1894, and upon which no bounty has been previously paid," etc.

That act further provided that "the bounty herein authorized to be paid shall be paid upon the presentation of such proofs of manufacture and production as shall be required in each case by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and under such rules and regulations as shall be prescribed," etc.

From the foregoing extracts from the laws of Congress on the subject it appears that a bounty on sugar was first granted to take effect on the first of July, 1891, and that the law remained in force until the 28th of August, 1894, when it was unconditionally repealed and ceased to have any effect.

In the month of September, 1894, the testator died. Consequently when his testament was probated and went into effect by the qualification of the executors therein appointed, whatever claim the testator had previously to the bounty had been completely annihilated by the repeal of the bounty law, and no right or claim thereto passed to Mrs. Allen as special legatee and beneficiary of the "net proceeds of the crop of 1894."

And when, in March, 1895, the second bounty act was passed, which gave to "those producers and manufacturers of sugar
197 who had complied with the provisions of the first bounty law a bounty of two cents a pound on all sugars manufactured and produced by them previous to the 28th of August, 1894," the crop of 1894 had been gathered and sold.

On this statement it seems evident that the avails of the bounty received a destination specially indicated in the act of Congress—that is to say, to those persons who had complied fully with the provisions of the former bounty law, and he had produced and manufactured the sugar *previous to the repeal of that law*, on the 28th of August, 1894.

When the executors took charge of the estate the bounty law was repealed, and all they did subsequently was to comply with the rules and regulations specified in the latter act and collect the money conformably thereto.

When collected it passed into their possession and custody as an unwilled asset of the deceased, and must pass to the account of the legal heirs. This, of course, results in charging to the general estate all the expenses that were incident to the collection of the bounty claim in 1895, as well as those which were engendered in 1894 preparatory to the collection prior to the passage of the repealing statute.

We understand this to be the purport of our opinion in Webre *vs.* Beltran, 47th Ann., 202, and of the United States court of appeals in Calder *vs.* Henderson, 2nd U. S. Appeals, 627. In the former case the Government issued a license to Beltran as a creditor, and that entitled him subsequently to collect the bounty.

As explanatory of the position of the Government in respect to bounty, *vide* United States *vs.* Realty Company, 163 U. S., 427.

In this respect we are of opinion that the account of the executors W. F. Collins and Mrs. Allen is erroneous.

IV.

Whether the three nieces who were excluded from participating in the *residuum* or unwilled portion of the estate of their ancestor should participate in that portion of it represented by the sugar bounty depends solely upon the response we make to the
198 proposition which is stated by their counsel in his answer to the appeal, viz., that the bounty money was a gift from the

Government that was made after the testator's death, and for that reason it did not pass into his succession nor constitute a part of the *residuum* thereof, but, on the contrary, descended to the legal heirs of the deceased directly.

We are not aware of any such an intermediate stage of inheritance as counsel's theory supposes.

The law declares that "the succession * * * becomes open by death." R. C. C., 934.

That "a succession is acquired by the legal heir * * * *immediately* after the death of the deceased person to whom he succeeds." R. C. C., 940.

That "the succession not only includes the rights and obligations of the deceased as they exist at the time of his death, but all that has accrued thereto since the opening of the succession," etc. R. C. C., 873.

From the foregoing provisions it is clear that *all* the unwilled assets of the deceased, including the bounty money, fell into the succession or general estate, whether same were *in esse* at the time of the ancestor's death or arose into existence subsequently and constituted the *residuum*, from participation in which the three disinterested legal heirs are precluded.

In this respect we think the account of the executors, W. F. Collins and Mrs. Allen, is also erroneous, it having attributed the bounty money to Mrs. Bettie Allen and this controversy being an ingredient thereof.

V.

We think it clear that the disputation about taxes is cut off by the plea of *res judicata* tendered by the executors, W. F. Collins and Mrs. Allen, same having figured on the provisional account previously filed and homologated, and which passed under review in the former decision of this court.

That was not only an account, but a partial tableau of dis-
199 tribution, and the item of taxes now agitated was thereon placed, allowed, and paid in pursuance of the judgment of the court.

Such a judgment is final and conclusive against heirs, legatees, and creditors and operates the bar of *res adjudicata*.

Succession of Conrad, 45th Ann., 89.

VI.

We note the contention of the executors, W. F. Collins and Mrs. Allen, to the effect that commissions of the executors have been erroneously taken into the calculation of the judge *a quo* as part of the expenses of the crops of 1894 and 1895 and deducted therefrom in finding the net proceeds thereof. They contend that the executors' commissions constitute a charge against the general estate of the deceased, to be ascertained upon the face of the inventory, and that same cannot be legally charged against the allowances going to legatees. In other words, that legatees must be paid in full.

Recurring to the statement we have already quoted from, the

judge *a quo's* reasons for judgment, we find amongst the charges that he deducted from "the gross proceeds of the crop of 1894" the "executors' commissions, $725.39." That item must refer to executors' commissions on the general estate, because their commissions for the collection of the bounty money were fixed at $96.41, and deducted therefrom separately.

The claim of counsel for the executors appears to be well founded in this respect, and the account should be so altered as to conform thereto.

VII.

We have dealt with the account of the executors, W. F. Collins and Mrs. Allen, as it appeared to furnish the better foundation on which to formulate an opinion than that of executor Ogden Smith, the latter being practically the foundation of the claim of the legal heirs.

A careful consideration of the case in all of its bearings has satisfied our minds that the judge *a quo* gave it his careful consideration and reached a correct solution of the controversy in all particulars except that appertaining to the executors' commissions.

In that respect the decree should be amended.

It is therefore ordered and decreed that the judgment appealed from be so amended as to tax the general estate with executors' commissions in the amount of seven hundred and twenty-five and $\frac{39}{100}$ dollars, and to place a corresponding sum to the credit of the net proceeds of the crop of 1894, which are attributable to Mrs. Bettie Allen as special legatee, and that as thus amended the same be affirmed, all costs to be taxed against the general estate.

Final Judgment.

(Extract from the Minutes.)

NEW ORLEANS, MONDAY, *April 12th*, 1897.

The court was daly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard.

Succession of RICHARD H. ALLEN. No. 12331.

It is ordered and decreed that the judgment appealed from be so amended as to tax the general estate with executors' commissions in the amount of seven hundred and twenty-five and $\frac{39}{100}$ dollars, and to place a corresponding sum to the credit of the net proceeds of the crop of 1894, which are attributable to Mrs. Bettie Allen as special legatee, and that as thus amended the same be affirmed, all costs to be taxed against the general estate.

Petition for a Rehearing on Behalf of Turner and Smith Heirs.

Filed April 26th, 1897.

201 Succession of RICHARD H. ALLEN. No. 12331.

The petition and application for a rehearing on the part of J. B. Turner and W. A. Turner, opponents and appellees, and on the part of Gaston and Ogden Smith, of widow Nellie Houchens, *née* Smith, and of Fred. W. and T. A. Smith, opponents and appellees, respectfully represents:

That there is error to their prejudice, as they conceive, in that part of the final decree rendered in the above-entitled cause on Monday, April 12th inst., which fixes and establishes executors' commissions at the sum of seven hundred and twenty five $\frac{39}{100}$ dollars ($725.39) and which charges said commissions to the mass of the estate.

And petitioners represent that said executors' commissions should be charged against the crops of 1894 and 1895 respectively, and not against the general estate, for the reason that the gestion of said executors was exclusively for and in the interest of widow Bettie Allen, particular legatee of said crops under the clause of the will which provides that the plantation be "worked or rented so as to pay all taxes and *other charges*, any over that to go to Mrs. Bettie Allen's credit." (Italics ours.)

And petitioners represent that said executors' commissions on said proceeds of said two crops of 1894 and 1895 are not governed (as they believe) by the rule which makes all debts and charges payable out of the general estate.

And petitioners further represent that there is error of calculation as to the amount of said executors' commissions; that said executor's commissions are charged twice against the estate, inasmuch as they were calculated and allowed on the standing crop of 1894 with the Rienzi plantation in the first account and tableau heretofore filed and homologated by the court, and that said executors, having charged and been paid their commissions on the basis of the
202 inventory of the plantation with its standing crop of 1894, should not be allowed commissions on the gross proceeds of said crop of 1894; but in case they are not now estopped, by reason of their previous action and of the final judgment homologating the former account, from claiming commissions on the gross proceeds of the crop of the year 1894, then they should give the estate credit for amount of commissions allowed and received on the appraised value of the standing crop of 1894 in the inventory and in the former account homologated by final decree of court.

Petitioners limit their application for a rehearing to the points hereinabove outlined, and desire to be allowed five days to file a brief in support of the same, with the calculations to be made of the exact amounts.

Petitioners further desire and pray the court to make more explicit the expressions in the decretal part of the opinion "and to

place a corresponding sum to the credit of the net proceeds of the crop of 1894, which are attributable to Mrs. Bettie Allen, as special legatee," for fear they should be misunderstood by the executors.

Wherefore petitioners pray for a rehearing on the points hereinabove specified only, and, in default of such rehearing, for a supplemental decree amending the former final decree in what they conceive to be errors of calculation, and disallowing or reducing the executor's commissions accordingly, and further explanatory of the former final decree.

And petitioners pray for a delay of five days to file briefs in support of this application for a rehearing; and your petitioners pray for all general and equitable relief needful in the premises.

(Signed) HENRY CHIAPELLA,
Attorney for Turner Heirs, and
(Signed) HENRY CHIAPELLA,
For L. F. SUTHON,
Attorney for Smith Heirs.

Petition of Mrs. Bettie Allen & W. F. Collins, Executors, for Rehearing.

Filed April 27th, 1897.

203 Succession of RICHARD H. ALLEN. No. 12331.

And now into this honorable court, by their undersigned counsel, come William F. Collins, herein appearing as the testamentary executor of the last will and testament of R. H. Allen, and Mrs. Bettie Allen, herein appearing as the testamentary executrix of the last will and testament of R. H. Allen and also in her own right to represent her interest and rights as a legatee under the said last will and testament, and they pray this honorable court to grant them a rehearing of the issues herein, in so far as the question of the disposition to be made of the amount accounted for in the accounts of the executors which arises from the payment by the United States of the bounty upon sugar made upon the Rienzi plantation, on the ground that in the decree of the court there is grave error to the great prejudice of the said Mrs. Bettie Allen on that point of the decree; that particularly the said decree is erroneous in that it adjudges that the amount so received by the executors was an unwilled asset of R. H. Allen, when in truth and in fact, under the law of the United States under which it was paid, being the act of March 2nd, 1895, ch. 189, 28 Stat., 910, 933, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1896, and for other purposes," the said bounty was given, not to R. H. Allen, who was then dead, but to the producer of the sugar made upon the Rienzi plantation and as a part of the fruits of that crop, and that the executors merely received the same under the regulations of the Treasury Department of the United States as trustees for the producer, who was under the statute of the United States the only person entitled to receive the same from them; that the said statute of the United States gave the said

bounty only to the producer, who was Mrs. Bettie Allen, she having paid all the costs of the production and having been charged by the court, at the instance of all parties, for the same at a time
204 when the receipt of anything upon the bounty was extremely doubtful; that the court having at the instance of all parties charged the amount coming to Mrs. Allen for the costs of procuring this bounty, it is against law and good conscience and equity to now deprive her of the profit accruing to the payment by her of the said charges, thus depriving her of the product of her capital.

That there is error to the prejudice of Mrs. Bettie Allen in charging her with the loss on the crop of 1895, because by the petition of all the executors it was declared that it was inexpedient to work the crop of that year under the will, and an application to sell the plantation was made by all the executors and consented to by the heirs and legatees; that the sale was not made, but the executors were forced to carry on the plantation for that year at a loss, as it proved; that Mrs. Allen, not only in that petition, but in her petition filed — her account on the 24th of January, 1895, proposed to turn over the plantation to the legatees as soon as the crop of 1894 was finished, thus renouncing any right to the crop of 1895, and thus preventing herself from claiming the said crop save as legatee of the plantation, if at all; that being thus prevented from at any time getting the profits, if any had been made, it is inequitable to charge her with the loss which should at least be divided between herself and the other legatees of the plantation, if it is not to be charged to the general estate.

Wherefore your appearers pray for a rehearing hereof and an amendment of the decree, so as to give Mrs. Allen the bounty money and to relieve her from the payment of the loss on the crop of 1895 to the extent of at least half of that loss, if not the whole of the loss.

Appearers pray for all and general relief, &c.

(Signed) BEATTIE & BEATTIE, *Attorneys.*

Application for Rehearing Supplemental Specification by Mrs. Bettie Allen, Legatee.

Filed April 27th, 1897.

205 Succession of RICHARD H. ALLEN. No. 12331.

The said Mrs. Bettie Allen, in her capacity as the legatee under the last will of the testator, R. H. Allen, dec'd, now appears, through her undersigned counsel, solely for the purpose to add to the original application for rehearing (to which this is a supplement and made a part) the following additional specifications of the grounds upon which she relies and now invokes the reconsideration by the court of the grounds of the conclusions and the decree thereon rendered by the court in the opinion rendered in this cause, namely:

First. That the act of March 2, 1895, under which the "bounty fund" in controversy in this cause was appropriated by Congress, contains two separate clauses and appropriations and provides for

the payment of two separate classes of bounties on sugar, namely, that class of producers and manufacturers of sugar who had produced and manufactured sugar *prior* to the repeal of the original bounty act of Oct. 1, 1890, by the repealing act *which took effect* August 28th, 1894, which class included all those beneficiaries under the original bounty act of Oct. 1, 1890, who had *prior* to the repeal thereof by the act of Aug. 28, 1894, fully earned the bounty appropriated by the original act of 1890, but whose bounty claims, though fully earned, had not been actually paid at the time and whose payment was cut off finally by the repealing act of Aug. 28th, 1894. This class is provided for in the first clause of the section of the act of M'ch 2, 1895, which provides for the payment of their claims on the basis and at the rate of bounty (of two cents a pound and one and three-fourths cents per pound) which those claimants were entitled to receive under the original act of 1890 at the time the repealing act of Aug. 28, 1894, took effect. This first clause of the act of 1895 was enacted by Congress to restore all those claimants under it whose claims existed under the original bounty act of Oct. 1, 1890, to that *status* and condition which they were in at the time the payment to them was cut off by the effect of the repealing act of August 28th, 1894.

See the case of Realty Company as distinguished from the
206 case of Mr. Gay in the opinion of the Supreme Court of the United States, 163 U. S., on pp. 431–'2.

The other or second clause of the act of M'ch 2, 1895, provided for the payment of a bounty at a different rate, viz., eight-tenths of a cent. per pound to be paid on sugars which had been produced and manufactured *after* the date the repealing act of August 28, 1894, took effect, and it provided for the payment at that rate of the bounty on all sugars actually produced and manufactured during that part of the fiscal year ending June 30, 1895, comprised in the period commencing Aug. 28, 1894, and ending June 30, 1895.

Second. That the "bounty fund" in dispute in this cause, the distribution of which is proposed in the accounts of Mrs. Bettie Allen, executrix, and W. F. Collins, co-executor, to be made to Mrs. Bettie Allen, the legatee under the will, was due and paid by the Government under the second clause of the act of 1895, and which clause limits this class of claims to those "producers and manufacturers" upon sugars actually produced and manufactured during that part of the fiscal year ending June 30th, 1895, comprised in the period commencing Aug. 28, 1894, and ending June 30, 1895.

Third. That the testator died on the 19th of Sept., 1894, or within a few days after the commencement of the period within which the sugar must have been produced and manufactured.

Fourth. That the sugar upon which the "bounty fund" in dispute in this case was paid by the Government was produced, harvested, and manufactured after the date of the death of the testator.

Fifth. That by the last will of the testator he disposed of the crop of 1894, which disposition took effect on the day of his death. R. C. C., 1571.

Sixth. That Mrs. Bettie Allen under the will is the legatee of all the avails of the crop of 1894, after payment of the taxes and other charges, and that she has, under R. C. C., 1626, "from the day of the testator's death a right to the thing bequeathed, which right may be transmitted to her heirs or assigns," and this "*right*" to the thing bequeathed is the right of ownership defined by article
207 490 of the Code, and exists without reference to possession. R. C. C., 496.

Seventh. That she, as executrix with seizin, is exempt by law from making any demand for the possession of the legacy, but is considered in possession from the date of the death of the testator. R. C. C., 1627, 1628; Suc'n Boone, 7 An., 128; Suc'n Ames, 33 An., 1328.

Eighth. That Mrs. Bettie Allen under the legacy is not only entitled of right to the thing bequeathed, but to have delivered to her along with *it "everything that pertains to it."* R. C. C., 1636.

Ninth. That Mrs. Bettie Allen, within the meaning and intendment of the second clause of that section of the act of M'ch 2, 1895, relative to bounty on sugar, is the "producer and manufacturer" of the sugars produced and manufactured in the period comprised between Aug. 28, 1894, and June 30, 1895, and upon which payment was made of the bounty fund in dispute in this case by the Government.

Tenth. That by effect of the bequest to Mrs. Allen no right, title, or interest in or to the crop became vested or remained in the succession; that the bequest to Mrs. Allen, including all the residuary right, title, or interest in the crop, except that portion of it absorbed by the payment of the taxes and other charges, excludes the legal succession and legal heirs of the testator therefrom, and at the date of the act of M'ch 2, 1895, there remained neither in the succession or to the legal heirs of the testator no right, title, or interest upon which the appropriation by Congress can be predicated.

Eleventh. That under the provisions of the act of Congress, in so far as those provisions are influenced by the facts of this case under the laws of this State in relation to the descent of property from a deceased testator, Mrs. Bettie Allen, under her rights as legatee succeeding by testamentary disposition to all the rights of the testator to everything which pertains to the legacy, is that "producer and manufacturer" meant and intended by the act of March 2, 1895,
208 and as such is the beneficiary of the bounty fund which it is now proposed finally to be disbursed by the accounts filed by the executors herein.

And she therefore prays as before that the rehearing herein prayed for be granted, and that the judgment of this honorable court heretofore rendered may be reversed, and that she be finally decreed to be the owner and true beneficiary of the said "bounty fund," and that the court do order the payment thereof to be made to her.

And she will ever pray, &c.

Respectfully submitted.

(Signed)

J. F. PIERSON, *Of Counsel.*

Rehearing Granted as to Bounty.

(Extract from the Minutes.)

NEW ORLEANS, MONDAY, *May 10th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard.

Succession of RICHARD H. ALLEN. No. 12331.

It is ordered that the rehearing applied for in this case be granted on the bounty question.

Motion and Order to Issue Mandate.

(Extract from Minutes.)

NEW ORLEANS, FRIDAY, *May 14th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

209 Succession of RICHARD H. ALLEN. No. 12331.

On motion of Beattie & Beattie, of counsel for Bettie Allen and William F. Collins, executors, and for Bettie Allen personally, and upon suggesting that this court rendered a decree on or about the 12th day of April, 1897, in this matter, by which the funds were ordered to be distributed; that thereafter motions and prayers for a rehearing were filed by movers and by J. B. Turner and W. A. Turner, and by Gaston Smith and Ogden Smith, Fred. W. Smith and T. A. Smith, and Nellie Smith, Widow Houchens; that thereafter, on Monday, May 10th, this court granted a rehearing in the matter at issue on the "bounty question;" that by the decree from which this appeal was taken a large amount of money, amounting to ($33,576.19) thirty-three thousand five hundred and seventy-six and $\frac{19}{100}$ dollars, was held for distribution, being the net proceeds of the crop of 1894, which, by the decree, goes to Mrs. Bettie Allen, less the amount thereof already received by her; that the judgment in this respect is now final: It is ordered by the court that the clerk of this court do certify to the district court that part of the decree that the said sum may be at once distributed.

Cause Argued and Submitted on Rehearing.

(Extract from the Minutes.)

NEW ORLEANS, FRIDAY, *June 4th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry

C. Miller, Newton C. Blanchard, associate justices. Absent: Francis T. Nicholls, chief justice.

Succession of RICHARD H. ALLEN. No. 12331.

This cause, in which the court, on the 10th day of May,
210 A. D. 1897, granted a rehearing on the question of bounty, came on this day to be heard, and was argued by counsel. Mr. James F. Pierson opened for Mrs. Bettie Allen, legatee and executrix, and W. F. Collins, executor, appellants; Mr. Lucius F. Suthon replied on behalf of the Smith heirs, opponents, appellants, followed by Mr. Charles Payne Fenner, for the succession of T. H. Allen, appellee, and by Mr. Henry Chiapella, for the Turner heirs, opponents and appellees; and Mr. Taylor Beattie, representing Mrs. Allen and Mr. Collins closed the argument; and the cause, having been submitted by counsel, was taken under advisement by the court upon the briefs for the respective parties and the papers now on file.

Opinion of the Court on Rehearing.

Filed June 14th, 1897.

NEW ORLEANS, *June 14th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

Absent: Francis T. Nicholls, chief justice.

His honor Mr. Justice Breaux pronounced the opinion and judgment of the court in the following case:

211 Succession of RICHARD H. ALLEN. No. 12331.

On rehearing.

Only one issue remains for further consideration.

The rehearing at this time confines the question to the bounty money.

The end of the bounty was to encourage the production of cane.

It devolved upon us to determine by whom the cane was produced.

In our judgment, after carefully reading the act, it is evident that the producer was to be the first to receive the benefit of the bounty.

It devolved upon him, in order to recover the bounty, to comply with certain formalities.

The act (although it includes the manufacture of cane into sugar as one of the essentials) places the manufacture of the sugar in matter of the bounty scheme in a secondary position.

In other words, in our view production was a first and manufacture a secondary consideration.

Each, however, was essential in order to enable the producer to recover the bounty.

In order to determine who was the producer, we have had to consider questions of title and of ownership.

To the day of the testator's death, on September 19th, 1894, the plantation had been his property; the crop had been planted and cultivated by him, and all expenses to that date were paid from his funds. The value of the crop at that date he had earned. He had also earned a proportionate share of the bounty, not because the bounty was part of the crop, not because it was a part of the proceeds, but because the bounty was granted to the producer of the crop.

212 In determining who was the producer it was not possible to exclude from all consideration the labor applied under the direction of the owner and the amount expended by him.

The legatee here claiming assisted after the date just stated in producing the crop, but she was not the exclusive producer and she, therefore, is not entitled to the whole bounty of the Government granted to the producers who produced an entire thing, a crop.

After having decided that to the date already mentioned the testator was the producer, we applied ourselves to ascertain by whom this producer was succeeded as a producer, whether it was Mrs. Bettie Allen, as legatee, or the legal heirs.

We must meet the fact, for it is plainly written in the will of the testator, that she was the legatee of one-half of the plantation. There was, it is true, qualification or limitation in matter of the right to one-half.

It remains that she was the owner of one-half of the place. If we were to stop here, this would limit the interest of Mrs. Allen as a producer to one-fourth of the crop—that is, if we should consider that the ownership of one-half of the plantation was of itself enough to prove that, she was the producer. We do not think it was.

But there are other clauses of the will which, in our view, extend her right and show that she was the producer after the death of Mr. Allen. She paid all the expenses of the crop; she was to receive the proceeds under the terms of the will; indeed, she was the owner of the crop. She can well be considered, as we think, the producer.

We desire it to be well understood that, in our opinion, the bounty money is no part of the crop or the proceeds of the crop. The question was, Who was the owner and producer of the crop after the death of the testator? We adhere to the case of Delogny *vs.* Her Creditors, 48th Ann. 488. In that case, as in the case before us, the owner of the crop was the producer of the crop, but she, Mrs. Delogny, in pledging the crop had not pledged the bounty granted by the Government.

Having settled upon this as our view of the point, we must determine the relative value of the interest of each producer.

213 We deem it in place to state that in ascertaining these values we calculated upon the basis of round numbers in support of a general conclusion, and not upon the basis of figures given to establish an absolute accurate balance. We think none

the less our basis is correct enough to sustain our judgment in the matter.

It is well known everywhere—in Louisiana, at any rate—that the labor and expense of cultivating a cane crop are about at an end on the 19th of September. The cane has been cultivated and laid by; the crop is left to the fertility of the soil, the fall of the sunbeams, and to the soft architectural hands of the showers.

As an estimate, we believe that on the well employed plantation, such as we think this was, the cost of cultivation is about equal to the cost of manufacture, and that upon that basis the heirs-at-law are entitled to one-half of the bounty and the legatee to the other half.

We have adopted this basis because we think it is fair and just to all the interested parties, and also because it concerns the State and heirs and legatees that there be an end to lawsuits.

If we were to remand the case to ascertain with great precision the value of the crop prior to the 19th of September and the value of the crop after the 19th — September, corresponding with the interest of each producer, we do not think the result would be more satisfactory and just. Besides, any difference which might be found would be more than counterbalanced by the unavoidable delay and expense consequent upon the remanding.

It is therefore ordered and adjudged that the bounty money in controversy be divided equally, and that one-half of this money be distributed among the heirs as an unwilled portion, and that the other half be delivered to Mrs. Allen, legatee.

With this amendment, the judgment appealed from is affirmed at appellees' costs.

214 Mr. Justice MILLER: My view is the bounty money goes to Mrs. Allen and those heirs who with her inherit the Rienzi plantation.

Final Judgment on Rehearing.

(Extract from the Minutes.)

NEW ORLEANS, MONDAY, *June 14th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

Absent: Francis T. Nicholls, chief justice.

Succession of RICHARD H. ALLEN. No. 12331.

It is ordered and adjudged that the bounty money in controversy be divided equally, and that one-half of this money be distributed among the heirs as an unwilled portion, and that the other half be delivered to Mrs. Allen, legatee.

With this amendment, the judgment appealed from is affirmed at appellees' costs.

(In the view of Mr. Justice Miller the bounty money goes to Mrs. Allen and those heirs who with her inherit the Rienzi plantation.)

Motion to Withhold Mandate.

Filed June 15th, 1897.

Succession of RICHARD H. ALLEN. No. 12331.

In this cause, on motion of J. F. Pierson, of counsel for Mrs. Bettie Allen, executrix and individually, as legatee under the last will and testament of R. H. Allen, dec'd, one of the parties litigant and in interest in said cause, and on suggesting to the court that
215 she desires to make application for and to obtain in proper form the writ of error from the Supreme Court of the United States to this hon. court to review thereon the opinion and final decree rendered by this hon. court in the said above-entitled cause, and on the grounds that the said decree is a final judgment or decree in the highest court of this State in which a decision in the said cause can be had, and wherein was drawn in question the title and right of the said Mrs. Bettie Allen to the "bounty fund" of eleven thousand five hundred and sixty-nine $\frac{65}{100}$ dollars involved in said cause and therein for and by her as the beneficiary and owner thereof under the act of Congress approved March 2, 1895, c. 189, 28 Stat., 910, 933, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1896, and for other purposes," and the said final opinion and decree of this hon. court, rendered herein as aforesaid, is against the said title and right of said Mrs. Bettie Allen to the extent of one-half of the aforesaid "bounty fund," namely, to the extent of five thousand seven hundred and eighty-four $\frac{80}{100}$ dollars, and which said "bounty fund" so in controversy was paid by the Federal Government, about Aug., 1896, under the provisions of the aforesaid act of Congress approved M'ch 2, 1895, to the executrix and her co-executors for the use and benefit of the true beneficiary and owner thereof under the aforesaid act of Congress of March 2, 1895, and under which said bounty fund in controversy was claimed by Mrs. Bettie Allen, executrix, and W. F. Collins, co executor, for Mrs. Bettie Allen, legatee, and by her in her own right as such legatee, and that under her right and title as such legatee the sugar on which said bounty was predicated under the said act of Congress was produced and manufactured, and that by virtue thereof she became and was such manufacturer and producer of the said sugars on which the said bounty fund in this case was paid and within the meaning and intendment of the said act of Congress, and that she is therefore under said act the true beneficiary and owner of the whole and entire bounty fund which was in controversy in said above-entitled cause;

216 On the further suggestion of said counsel that on the trial of said cause the right and title of Mrs. Bettie Allen to the said bounty fund of $11,569.65 in controversy and therein claimed by her under the said act of Congress of M'ch 2nd, 1895, was drawn in question on said trial and in the opinion and decree of this hon. court rendered thereon, which became the final judgment and de-

cree of the highest court of this State in which a decision of said cause can be had, and which decree of this hon. court is against the said right and title so specially set up and claimed by her under the act of Congress aforesaid, to the extent of one-half of said bounty fund, that therefore the said final judgment and decree of this hon. court in this cause, rendered as aforesaid, may be re-examined and reversed or affirmed in the Supreme Court of the U. S. upon a writ of error, pursuant to the acts of Congress and the laws of the U. S. thereto enacted, and said Mrs. Bettie Allen desires in proper form, within the delays allowed by law, to apply for, obtain, and prosecute the said writ of error from the Supreme Court of the United States to this hon. court in the above-entitled cause, and to obtain and perfect a *supersedeas* under said writ, and that in the meantime that this cause be not remanded pending same to the lower court:

It is thereupon ordered that no mandate or certified copy of the decree rendered herein be made, issued, or amended to the lower court for the term of — days from date of this order or until the further order of this court.

217

Copy.

Bond for Writ of Error.

Filed July 2nd, 1897.

Succession of RICHARD H. ALLEN. No. 12331.

Know all men by these presents that we, Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, and each of them, as principals, and J. F. Pierson and Mrs. Fannie H. Henderson, represented by her specially authorized agent, Sam. Henderson, as sureties, are held and firmly bound unto Ogden Smith, co-executor of the last will and testament of Richard H. Allen, deceased; unto J. Louis Aucoin in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; unto John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred. W. Smith, Mrs. Nellie Houchens, *femme sole*, Mrs. Jennie Boyle, and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker and a *femme sole*, in the full sum of one thousand five hundred dollars ($1,500), to be paid to the above-named obligees or any of them, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated, at the city of New Orleans, Louisiana, on this the second day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

Approved.
(Signed) FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of Louisiana.

Whereas lately, viz., on the fourteenth day of June, A. D. 1897, at the supreme court of the State of Louisiana, in the city of New Orleans, in a suit depending in said court, entitled Succession of R. H. Allen, deceased, No. 12331, wherein the above-bounden principal obligors were plaintiffs and the above-named obligees were defendants, judgment was rendered against the said above-named principal obligors, and the said above-named principal obligors having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said above-named obligees, defendants, any and all of them, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden
218 at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said above bounden and named principal obligors shall prosecute their said writ to effect and answer all damages and cost if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

(Signed) MRS. BETTIE ALLEN. [L. S.]
(Signed) MRS. BETTIE ALLEN, *Executrix.* [L. S.]
(Signed) W. F. COLLINS, *Executor.* [L. S.]
(Signed) J. F. PIERSON.
(Signed) FANNIE H. HENDERSON, *Femme Sole, per pro* SAM. HENDERSON, JR.

Sealed and delivered in the presence of—
(Signed) J. F. PIERSON.
(Signed) WALTER S. COLLINS.

STATE OF LOUISIANA, } *ss:*
Parish of Orleans, }

Personally appeared Sam. Henderson, ag't for Mrs. Fannie H. Henderson, who, being duly sworn, deposes and says that she is the surety on the within bond; that she resides in New Orleans, State of Louisiana, and is worth the full sum of fifteen hundred dollars over and above all her debts and liabilities and property exempt from execution, and that he is the authorized agent to sign the above bond.

(Signed) SAM. HENDERSON, JR.

Subscribed and sworn before me this 2nd day of July, 1897.
[SEAL.] (Signed) JEFF. C. WENCK,
Notary Public.

STATE OF LOUISIANA, } *ss:*
Parish of Orleans, }

Personally appeared before the undersigned authority, J. F. Pierson, who, being duly sworn, says that he is surety on the within bond; that he resides in the city of New Orleans, State of
219 Louisiana, and that he is worth more than the sum of fifteen hundred dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) J. F. PIERSON.

Sworn and subscribed to before me on this the second day of July, A. D. 1897.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of Louisiana.

Motion and Order for Extension of Return Day.

Filed July 2nd, 1897.

Succession of RICHARD H. ALLEN. No. 12331.

Mrs. BETTIE ALLEN, Individually and as Executrix, and W. F. Collins, Co-executor for the Succ'n of R. H. Allen, Dec'd, Plaintiffs in Error,

vs.

OGDEN SMITH, Individually and as Co-executor for said Succession; J. Louis Aucoin, Administrator for the Succession of Thomas H. Allen, Dec'd; John B. Turner, and Other Heirs to the Succession of Richard H. Allen, Dec'd, Def'ts in Error.

In error to the supreme court of Louisiana.

In this cause, on the motion of J. F. Pierson, Esq., attorney for the above-named plaintiffs in error, and on suggesting to the hon. the chief justice of the supreme court of Louisiana that it is desired by counsel for the plaintiff- in error in said cause to procure from the different counsel representing the defendants in error a mutual agreement as to what documents and portions of the record on file in the supreme court of Louisiana shall be or not included in the transcript and record to be sent up with the writ of error to the Supreme Court of the United States, and on suggesting that owing to the said counsel residing at points remote from the city of New Orleans some delay will necessarily be occasioned to obtain the wishes and views of all the counsel engaged in the said cause, and on suggesting that an enlargement of the thirty days fixed
220 by law and the rules of the Supreme Court of the United States will be necessary to enable the clerk of the supreme court of Louisiana to properly prepare the record for transmission into the Supreme Court of the United States—

It is thereupon ordered that an enlargement and extension of the time for the return of the record to be made into the Supreme Court of the United States and for docketing this cause in said Supreme Court of the United States be, and the same is hereby, granted until and to expire on Monday, the sixth day of September, A. D. one thousand eight hundred and ninety-seven.

Thus done and signed at the city of New Orleans, State of Louisiana, on this the second day of July, A. D. one thousand eight hundred and ninety-seven, and of the Independence of the United States — one hundred and twenty-first.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

221 Copy.

Bond for Writ of Error.

Filed August 14th, 1897.

Succession of RICHARD H. ALLEN. No. 12331.

Know all men by these presents that we, Ogden Smith, individually and as testamentary executor of the succession of Richard H. Allen; Gaston Smith, T. A. Smith, F. W. Smith, and Mrs. Widow Nellie Houchens, *née* Smith, J. B. Turner, W. A. Turner, and J. L. Aucoin, administrator of the succession of T. H. Allen, and each of them, as principals, and Charles P. Fenner and Henry Chapella, as sureties, are held and firmly bound unto Mrs. Widow Bettie Allen, individually and as testamentary executrix of the succession of Richard H. Allen, and W. F. Collins, as co-executor of the succession of Richard H. Allen, and Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Chas. Baker, a *femme sole*, in the full and just sum of three hundred dollars, to be paid to the said above-named widow, Bettie Allen, individually and as executrix, and *H.* F. Collins, as co-executor of the succession of Richard H. Allen, and Mrs. Jennie Boyle, Mrs. Bettie De Berry, and Mrs. Ellen B. Baker, or any of them, and their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourteenth day of August, in the year of our Lord one thousand eight hundred and *eighty*-seven.

Whereas lately, viz., on June the fourteenth, 1897, at the supreme court of the State of Louisiana, in the city of New Orleans, State of Louisiana, in a suit depending in said supreme court entitled Succession of Richard H. Allen, No. 12331, wherein the above-bound principal obligors were plaintiffs and opponents and the said obligees were defendants and opponents, judgment was rendered against

222 the said above-bounden obligors as to one-half of the bounty fund or appropriation, viz., as to the sum of five thousand seven hundred and eighty-four dollars, and the said above-named principal obligors having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said above-named obligees, opponents and defendants, and any and all of them, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such that if the said above bounden and named principal obligors shall prosecute their said writ to effect and answer all damages and cost if they fail to

make their said plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) J. L. AUCOIN, *Administrator*,
p. pro FENNER, HENDERSON & FENNER, *Att'ys.*
OGDEN SMITH,
Co-executor Succession R. H. Allen & Individually.
GASTON SMITH,
T. A. SMITH,
F. W. SMITH,
MRS. NELLIE HOUCHENS,
J. B. TURNER,
W. A. TURNER,
Per HENRY CHIAPELLA,
Attorney for Self & for Suthon and Knobloch, Att'ys.

(Signed) CHARLES PAYNE FENNER.
" HENRY CHIAPELLA.

Sealed and delivered in the presence of—
(Signed) T. McC. HYMAN.
" PAUL E. MORTIMER.

(Endorsed on face of bond:) Approved this August 14th, 1897. (Signed) L. B. Watkins, acting chief justice of the supreme court of the State of Louisiana & senior associate justice, the chief justice being absent on leave from the State of Louisiana.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA, } ss:
City of New Orleans, }

Personally appeared Chas. P. Fenner and Henry Chiapella, who, being duly sworn, depose and say that they are the sureties on the within bond; that they reside in the parish of Orleans, State of Louisiana, and that they have property sufficient to answer the amount of this obligation, and are worth the full sum of three hundred dollars over and above all their debts and liabilities and property exempt from execution.

223 (Signed) CHAS. PAYNE FENNER.
(Signed) HENRY CHIAPELLA.

Subscribed and sworn before me this 14 day of August, 1897.
(Signed) T. McC. HYMAN,
[SEAL.] *Clerk Supreme Court, La.*

224 *Agreement of Counsel as to Transcript of Appeal.*

Filed August 30th, 1897.

Supreme Court of Louisiana.

Succession of R. H. ALLEN. No. 12331.

It is hereby stipulated and agreed between the undersigned, counsel representing all the parties in interest to the several writs of

error herein obtained to the Supreme Court of the United States from the final judgment hereinbefore rendered by the supreme court of the State of Louisiana, as follows, to wit:

1. The writs of error may be prosecuted jointly and only one transcript prepared and filed in the Supreme Court of the United States.

2. The transcript already prepared by the clerk of the supreme court of Louisiana, to which this stipulation is attached, is agreed to be a complete transcript, with the understanding that, subject to the rules of the Supreme Court of the United States in such cases made and provided, any party to this stipulation may at any time supplement the said transcript by filing such additional part or parts of the original record as he may deem necessary.

3. All the costs incidental to the prosecution of the writs of error to the Supreme Court of the United States shall be paid out of the so-called "bounty fund" now in the hands of the executors of this succession before any distribution thereof shall be made.

(Signed) HENRY CHIAPELLA,
Attorney for J. B. Turner and W. A. Turner, Plaintiffs in Error.

(Signed) HENRY CHIAPELLA,
For L. F. Suthon, Attorney for Smith Heirs, Plaintiffs in Error.

(Signed) HENRY CHIAPELLA,
For Clay Knobloch & Son, Att'y- for Ogden Smith, Executor Succession R. H. Allen, Plaintiff in Error.

(Signed) J. F. PIERSON,
Att'y for Mrs. Bettie Allen, Executrix and Individually.

(Signed) FENNER, HENDERSON & FENNER,
Att'ys for Aucoin, Adm'r Succ. T. H. Allen.

225 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing two hundred and twenty-four pages contain a full, true, and complete copy of the proceedings had in the eighteenth judicial district court for the parish of Lafourche, in a a certain suit entitled Succession of Richard H. Allen, which suit is on the files thereof under No. 12331, and also of all the proceedings had in the supreme court on said appeal.

Seal Supreme Court of the State of Louisiana.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this 31st day of August, *anno*

Domini one thousand eight hundred and ninety-seven, and in the one hundred and twenty-second year of the Independence of the United States of America.

T. McC. HYMAN, *Clerk.*

226 UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Lynn Boyd Watkins, senior associate justice and presiding justice of the supreme court of the State of Louisiana, do hereby certify that Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, is now absent from the State; that Thomas McCabe Hyman is clerk of the supreme court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate, in the case of Succession of Richard H. Allen, No. 12331 of the docket, S. C., is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

Seal Supreme Court of the State of Louisiana.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 31st day of August, A. D. 1897.

L. B. WATKINS,
Presiding Justice.

227 The following documents are sent up to the Supreme Court of the United States in the original form:

First. Petition and order for writ (Pierson, att'y).
Second. Assignment of errors (Pierson, att'y).
Third. Writ of error (Pierson, att'y).
Fourth. Twelve sheriff's return- on citation of appeal (Pierson).
Fifth. Petition and order for writ (Chiapella, att'y).
Sixth. Assignment of errors (Chiapella, att'y).
Seventh. Writ of error (Chiapella, att'y).
Eighth. Five sheriff's returns on citation of appeal (Chiapella).

228 Supreme Court of Louisiana.

Succession of RICHARD H. ALLEN, Deceased. No. 12331.

To the honorable the chief justice of the supreme court of Louisiana:

The petition of Mrs. Bettie Allen, surviving widow of the said Richard H. Allen, deceased, executrix, and of William F. Collins, executor of the last will and testament of said decedent, duly confirmed and qualified as such, she being also the legatee by particular title of the standing, growing crops of sugar cane left by decedent on the Rienza plantation at the time of his death, on September 19th, 1894, and she now appearing herein in her capacity as executrix and for herself individually under her rights as legatee under the said last will and testament, with respect represents:

That there is error to her prejudice in the final judgment rendered by the supreme court of Louisiana in the above-entitled cause on the fourteenth day of June, A. D. 1897; that the said supreme court which rendered said judgment was and is the highest court of the said State of Louisiana in which a decision of said cause can be had, and that said decision and judgment therein rendered has become and is now final.

Petitioners further show that there was drawn in question in the decision of said cause the proper interpretation and effect of the act of Congress of the United States approved March 2nd, 1895, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30th, 1896, and for other purposes" (C. 189, 28 Stat., 910, 913), and the rights, titles, privileges, and immunities of your petitioner Mrs. Bettie
229–329 Allen, as the beneficiary and owner of the bounty fund of eleven thousand five hundred and sixty-nine and $\frac{65}{100}$ dollars ($11,569.65) which the Government of the United States had paid in July or August, A. D. 1896, to the executors of the said estate and succession of said decedent under the provisions and appropriations of the said act of Congress for the use and benefit of the true beneficiary and proper owner thereof under the said act of Congress before mentioned.

That the said bounty fund before mentioned was claimed in the said cause and on the trial thereof for her by W. F. Collins, executor, and herself as executrix, and by her individually as the manufacturer and producer of the sugars on which same was so paid, and hence as the true beneficiary and proper owner of said bounty fund within the true intent and meaning of the said act of Congress of March 2nd, 1895, before mentioned.

That the said claims so made for and by her in said cause, as aforesaid, were opposed, denied, and resisted by Ogden Smith, co-executor of the said estate and succession, for and in the interests of himself and others of the legal heirs of said estate and succession, namely, by J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; by John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred W. Smith, Mrs. Helen Houchens, a *femme sole*; Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and by Mrs. Ellen B. Baker, divorced wife of Charles Baker and a *femme sole*, as the legal heirs to the said estate and succession of said Richard H. Allen, deceased; that in the said above-entitled cause an issue was made and formed, your petitioners, the said Mrs. Bettie Allen, executrix, and W. F. Collins, executor, and the said Mrs. Bettie Allen, individually, being taken, in-
330 tended, and standing as plaintiffs on the one side, claiming the said bounty fund for the said Mrs. Bettie Allen, individually, and the said Ogden Smith, co-executor, and the before named and mentioned parties as the legal heirs of said estate and succession of said Richard H. Allen, deceased, opposing, denying, and resisting said claims by and for Mrs. Bettie Allen, but to the contrary claiming said fund for the said mentioned legal heirs as an unwilled asset

of the said estate and succession being taken, intended, and standing as defendants on the other side of said issue in said cause.

That the said decision of the supreme court of Louisiana, rendered on said issue and in said cause, was against the right, title, privilege, and ownership of your petitioner, Mrs. Bettie Allen, to said bounty fund, set up and claimed for and by her under the act of Congress before mentioned, as to one-half of said bounty fund, namely, as to five thousand seven hundred and eighty-four dollars ($5,784.00) thereof.

Petitioners further show that they and each of them and the said Mrs. Bettie Allen individually desire to have the said erroneous decision and judgment of the supreme court of Louisiana reviewed and corrected by the Supreme Court of the United States, under the provisions of section 709 and other sections of the Revised Statutes of the United States, as to the said half of said bounty fund which was so denied and refused to her, and upon the annexed assignment of errors, and upon other plain errors apparent on the face of the record.

Wherefore petitioners pray that a writ of error may be allowed, returnable to the Supreme Court of the United States, as the law directs, upon petitioners furnishing bond and security therefor in such sums as your honor may direct, and that the said Ogden Smith, in his capacity as co-executor for the estate and succession of said Richard H. Allen, deceased, and J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred W. Smith, and Mrs. Helen Houchens, a *femme sole*; Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker, a *femme sole*, each, all, and every of them, may be severally cited, according to law, to answer in the premises; and petitioners pray for such further orders as may be necessary in the premises.

331

New Orleans, June 19th, 1897.

J. F. PIERSON,
Of Counsel for Petitioners.

Order.

Let the prayer of the foregoing petition be granted and let a writ of error be allowed as prayed for, upon petitioners' furnishing bond, with solvent security, in the sum of fifteen hundred dollars, conditioned as the law directs.

New Orleans, June 21st, 1897.

FRANCIS T. NICHOLLS,
Chief Justice.

Mrs. BETTIE ALLEN, Individually and as Executrix, and W. F. Collins, Co-executor for the Succession of Richard H. Allen, Deceased, Plaintiffs in Error,

vs.

OGDEN SMITH, Individually and as Co-executor for the Succession of Richard H. Allen, Deceased; J. Louis Aucoin, Administrator for the Succession of Thomas H. Allen, Deceased; John B. Turner and Others, Heirs to the Succession of Richard H. Allen, Deceased, Defendants in Error.

In error to the supreme court of Louisiana.

Assignment of Error.

333 I. That the State court erred in holding that the defendants in error or the legal heirs to the succession of Richard H. Allen, deceased, are entitled to and in awarding to them one-half of the bounty fund in controversy, which was paid by the Government under the act of Congress approved March 2nd, 1895.

II. That the State court erred in not holding that Mrs. Bettie Allen, as the owner of the crop and the producer of the sugar manufactured from the crop between August 28th, 1894, and June 30th, 1895, is the true beneficiary and owner entitled to, and in not awarding to her, the entire amount of the bounty fund in controversy, which was paid by the Government in this case under the act of Congress approved March 2nd, 1895.

III. That the State court erred in holding that the decedent (Richard H. Allen), by planting, cultivating, and growing the crop of sugar cane up to September 19th, 1894, the date of his demise, and a date before the sugar cane had been matured or harvested, had thereby earned or become entitled to one-half or any portion of the bounty fund in controversy in this case, which fund was subsequently provided for and appropriated in the act of Congress approved March 2nd, 1895, and paid by the Government thereunder.

IV. That the State court erred in holding that the decedent, R. H. Allen, was a "producer" within the meaning or intendment of those provisions of the act of Congress of March 2nd, 1895, relative to bounty on sugar, and that his legal heirs are entitled to and were therefore awarded one-half of the said bounty fund in controversy, because the decedent had prior to his demise, on September 19th, 1894, planted and cultivated a crop in sugar cane up to
334 a period before the sugar cane had matured or been harvested.

V. The State court erred in not holding under the act approved March 2nd, 1895, that the "producer" meant and intended in those provisions of the act relating to bounty on sugar is the plaintiff in error, Mrs. Bettie Allen, the person by whom and for whose account the sugar cane was manufactured and produced into sugar on which the said bounty fund in this case was paid by the Government.

VI. That the State court erred in holding that the producer of sugar cane "was to be the first to receive the bounty."

VII. That the State court erred in holding that "the act places the manufacture of the sugar in the matter of the bounty scheme in a secondary position," and in holding that the "production (of sugar cane) was a first, and (the) manufacture (of sugar) a secondary consideration."

VIII. That the State court erred in holding that the testator, at the date of his death, September 19th, 1894, because he had planted and cultivated the crop at his own expense and from his own funds, and because he had then earned the value of the crop, had therefore earned a proportionate share of the bounty.

IX. That the State court erred in holding that "in determining who was the producer (under the act of Congress) it was not possible to exclude from all consideration the labor applied under the direction of the owner and the amount expended by him" in the production of the crop of sugar cane.

335 X. That the State court erred in holding that the plaintiff in error, Mrs. Bettie Allen, legatee, although she assisted after September 19th, 1894, in producing the crop, that she is not the exclusive producer (of the sugar), "and she therefore is not entitled to the whole bounty of the Government granted to the producers who produced an entire thing, a crop."

XI. That the State court erred in holding that the testator, Richard H. Allen, deceased, up to September 19th, 1894, the date of his demise, "was the producer" within the intent or meaning of those provisions of the act relative to bounty on sugar.

XII. That the State court erred in holding that it was necessary to the proper distribution or the correct ascertainment of the true beneficiary and owner of the bounty fund in controversy to "determine the relative value of the interest of each producer" of the crop of sugar cane, and in not holding that the plaintiff in error, Mrs. Bettie Allen, as the owner of the crop, in possession from September 19th, 1894, under whose right and title and for whose account the sugar cane was matured and harvested and was subsequently "actually manufactured and produced" into sugar, was the sole and exclusive manufacturer and producer of the sugars upon which said bounty fund in controversy was paid by the Government, and as such the sole beneficiary and exclusive owner of the said bounty fund in dispute.

New Orleans, June 19th, 1897.

J. F. PIERSON,
Of Counsel for Pl'ff in Error.

336 [Endorsed:] 12331. Supreme court of Louisiana. Succession of Richard H. Allen. Assignment of errors. Filed June 21st, 1897. T. McC. Hyman, clerk.

337 [Endorsed:] No. 12331. Supreme court La. Succession of Richard H. Allen, deceased. Petition for writ of error; order thereon. Filed June 21, 1897. T. McC. Hyman, clerk.

338 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Mrs. Bettie Allen, individually and as executrix, and W. F. Collins, co-executor for the succession of Richard H. Allen, deceased, as plaintiffs in error, and Ogden Smith, individually and as co-executor for the succession of Richard H. Allen, deceased; J. Louis Aucoin, administrator for the succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred. W. Smith, Mrs. Helen Houchens, *femme sole;* Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Chas. Baker, a *femme sole*, defendants in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Constitution or of a treaty
339 or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Mrs. Bettie Allen, individually and as executrix, and of W. F. Collins, co-executor for the succession of Richard H. Allen, deceased, plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 21 day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by, —— ——.

339½ [Endorsed:] No. 12331. Supreme court La. Succession of Richard H. Allen, deceased. Writ of error. Filed June 21, 1897. T. McC. Hyman, clerk.

340 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Ogden Smith, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, are plaintiffs in error and Ogden Smith, co-executor of the last will and testament of Richard H. Allen, deceased; J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred W. Smith, Mrs. Nellie Houchens, *femme sole;* Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker and *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor of the last will and testament of Richard H. Allen, deceased, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2nd day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

341 [Endorsed:] Ogden Smith. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen, deceased. Citation. Sheriff's return.

I hereby acknowledge service of the within citation.
July 12th, 1897.

L. F. SUTHON,
Counsel and Attorney of Ogden Smith in the Supreme Court of State of Louisiana.

Filed July 15, 1897.
T. McC. HYMAN, *Clerk.*

342 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to J. Louis Aucoin, in your capacity of administrator for the estate and succession of Thomas H. Allen, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, are plaintiffs in error and Ogden Smith, co-executor of the last will and testament of Richard H. Allen, deceased; J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred W. Smith, Mrs. Nellie Houchens, *femme sole;* Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker and a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will & testament of Richard H. Allen, deceased, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2nd day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

343 [Endorsed:] J. Louis Aucoin, administrator. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen, deceased. Citation. For service.

We hereby certify that we have received and accepted service of the within citation and received the duplicate thereof at the city of New Orleans on this 14th day of July, 1897, for J. Louis Aucoin, administrator succession of Thomas H. Allen, defendant in error.

New Orleans, July 14th, '97.

FENNER, HENDERSON & FENNER, *Att'ys.*

Filed July 15, 1897.

T. McC. HYMAN, *Clerk.*

344 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to John B. Turner, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, are plaintiffs in error and Ogden Smith, co-executor of the last will and testament of Richard H. Allen, deceased; J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred W. Smith, Mrs. Nellie Houchens, *femme sole;* Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie Deberry and her husband, A. W. Deberry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker and a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 24 day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS F. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

345 [Endorsed:] John B. Turner. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen, deceased. Citation. Sheriff's return.

I hereby certify that I have received and accepted duplicate of the within citation, at the city of New Orleans, on this the 8th day of July, 1897, for John B. Turner, def't in error, residing in the State of Texas.

N. O., July 8th, '97.

HENRY CHIAPELLA,
Attorney for J. B. Turner.

Filed July 15, 1897.

T. McC. HYMAN, *Clerk.*

346 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to William A. Turner, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, are plaintiffs in error and Ogden Smith, co-executor of the last will and testament of Richard H. Allen, deceased; J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Odgen Smith, T. A. Smith, Gaston Smith, Fred. W. Smith, Mrs. Nellie Houchens, *femme sole*; Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker and a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2d day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

347 [Endorsed:] William A. Turner. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby certify that I have received and accepted duplicate of the within citation, at the city of New Orleans, on this the 8th day of July, 1897, for William A. Turner, def't in error, residing in the State of Texas.

N. O., July 8th, '97.

HENRY CHIAPELLA,
Attorney for W. A. Turner.

Filed July 15, 1897.

T. McC. HYMAN, *Clerk.*

348 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Ogden Smith, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, are plaintiffs in error and Ogden Smith, co-executor of the last will and testament of Richard H. Allen, deceased; J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Odgen Smith, T. A. Smith, Gaston Smith, Fred. W. Smith, Mrs. Nellie Houchens, *femme sole*; Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker and a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2nd day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

349 [Endorsed:] Ogden Smith. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby acknowledge service of the within citation.
New Orleans, July 10th, 1897.

CLAY KNOBLOCH & SON,
Att'ys for Ogden Smith, Co-executor.

Filed July 15, 1897.

T. McC. HYMAN, *Clerk.*

350 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to T. A. Smith, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, are plaintiffs in error and Ogden Smith, co-executor of the last will and testament of Richard H. Allen, deceased; J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred. W. Smith, Mrs. Nellie Houchens, *femme sole;* Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker and a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testamentof Richard H. Allen, deceased, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2d day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

351 [Endorsed:] T. A. Smith. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby acknowledge service of the within citation.
July 12th, 1897.

L. F. SUTHON,
Counsel and Attorney of T. A. Smith in Supreme Court of the State of Louisiana.

Filed July 15, 1897.

T. McC. HYMAN, *Clerk.*

352 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Gaston Smith, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, are plaintiffs in error and Odgen Smith, co-executor of the last will and testament of Richard H. Allen, deceased; J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred. W. Smith, Mrs. Nellie Houchens, *femme sole*; Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker and a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2d day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

353 [Endorsed:] Gaston Smith. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby acknowledge service of the within citation.
July 12th, 1897.

L. F. SUTHON,
Counsel and Attorney of Gaston Smith in Supreme Court of the State of Louisiana.

Filed July 15, 1897.

T. McC. HYMAN, *Clerk.*

354 UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Fred W. Smith, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, are plaintiffs in error and Odgen Smith, co-executor of the last will and testament of Richard H. Allen, deceased; J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred. W. Smith, Mrs. Nellie Houchens, *femme sole;* Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker and a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2d day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

355 [Endorsed:] Fred. W. Smith. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby acknowledge service of the within citation.
July 12th, 1897.

L. F. SUTHON,
Counsel and Attorney of Fred. W. Smith in the Supreme Court of the State of Louisiana.

Filed July 15, 1897.

T. McC. HYMAN, *Clerk.*

356 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Mrs. Nellie Houchens, *femme sole*, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, are plaintiffs in error and Ogden Smith, co-executor of the last will and testament of Richard H. Allen, deceased; J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred. W. Smith, Mrs. Nellie Houchens, *femme sole*; Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker and a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2d day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

357 [Endorsed:] Mrs. Nellie Houchens, *femme sole*. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby acknowledge service of the within citation.
July 12th, 1897.

L. F. SUTHON,
Counsel and Attorney of Mrs. Nellie Houchens in the Supreme Court of the State of Louisiana.

Filed July 15, 1897.

T. McC. HYMAN, *Clerk.*

358 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Mrs. Jennie Boyle and her husband, John Boyle, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, are plaintiffs in error and Ogden Smith, co-executor of the last will and testament of Richard H. Allen, deceased; J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred. W. Smith, Mrs. Nellie Houchens, *femme sole;* Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker and a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2nd day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

359 [Endorsed:] Mrs. Jennie Boyle & her husband, John Boyle. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby certify that I have received and accepted service of the within citation and received the duplicate thereof, at the city of New Orleans, on this 15th day of July, 1897, for Mrs. Jennie Boyle — her husband, John Boyle, defendants in error.

New Orleans, July 15th, 1897.

L. DE POORTER,
Att'y for Mrs. Jennie Boyle and Her Husband, John Boyle.

Filed July 15, 1897.

T. McC. HYMAN, *Clerk.*

360 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Mrs. Bettie De Berry and her husband, A. W. De Berry, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, are plaintiffs in error and Ogden Smith, co-executor of the last will and testament of Richard H. Allen, deceased; J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred W. Smith, Mrs. Nellie Houchens, *femme sole;* Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker and *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2d day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

361 [Endorsed:] Mrs. Bettie De Berry and her husband, A. W. De Berry. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby certify that I have received and accepted service of the within citation and received the duplicate thereof at the city of New Orleans on this 15th day of July, 1897, for Mrs. Bettie De Berry and her husband, A. W. De Berry, defendants in error.

New Orleans, July 15th, 1897.

L. DE POORTER,
Att'y for Mrs. Bettie De Berry & Her Husband, A. W. De Berry.

Filed July 15, 1897.
T. McC. HYMAN, *Clerk.*

362 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Mrs. Ellen B. Baker, *femme sole*, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, are plaintiffs in error and Ogden Smith, co-executor of the last will and testament of Richard H. Allen, deceased; J. Louis Aucoin, in his capacity of administrator for the estate and succession of Thomas H. Allen, deceased; John B. Turner, William A. Turner, Ogden Smith, T. A. Smith, Gaston Smith, Fred. W. Smith, Mrs. Nellie Houchens, *femme sole;* Mrs. Jennie Boyle and her husband, John Boyle; Mrs. Bettie De Berry and her husband, A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker and a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Bettie Allen, *femme sole*, individually and in her capacity as executrix, and W. F. Collins, in his capacity as co-executor, of the last will and testament of Richard H. Allen, deceased, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2d day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

363 [Endorsed:] Mrs. Ellen B Baker, *femme sole*. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby certify that I have received and accepted service of the within citation and received the duplicate thereof at the city of New Orleans on this 15th day of July, 1897, for Mrs. Ellen B. Baker, *femme sole*, defendant in error.

New Orleans, July 15th, 1897.

L. DE POORTER,
Att'y for Mrs. Ellen B. Baker.

Filed July 15, 1897.
T. McC. HYMAN, *Clerk.*

364 HOUMA, LA., *June 23rd*, 1897.

Henry Chiapella, Esq., New Orleans, La.

DEAR SIR: I have been away for a couple of days and have just received your letter of 19th inst.; authorize you to act for me in matter of writ of error. I trust I am not too late.

Yours truly, L. F. SUTHON.

365 Clay Knobloch. Earle Knobloch.

Clay Knobloch & Son, attorneys and counsellors at law.

THIBODAUX, LA., *June* 23, '97.

Henry Chiapella, Esq., New Orleans, La.

DEAR SIR: Answering yours of 19th inst. *In re* Suc. Allen, will state that we authorize you to file petition for Ogden Smith, co-executor, in our name for writ of error from U. S. Sup. Ct.

Thanking you in advance, we are

Yours truly, CLAY KNOBLOCH & SON.

366 Law offices of Fenner, Henderson & Fenner, No. 127 Carondelet street.

NEW ORLEANS, LA., *Aug.* 12, 1897.

Henry Chiapella, Esq., city.

DEAR SIR: I find that it will be impossible for me to go with you to see Judge Watkins at Pass Christian in reference to the writ of error in the Succession of Allen. I would be very much obliged if you will prepare the petition in the joint name of your clients and mine and obtain the necessary order thereon from Judge Watkins. As there is nothing involved but a question of costs, it seems to me that a bond for $500 would be ample.

Yours very truly, CHAS. PAYNE FENNER.

367 Supreme Court of the State of Louisiana.

Succession of RICHARD H. ALLEN. No. 12331.

To the honorable the chief justice or presiding associate justice of the supreme court of the State of Louisiana:

The petition of Ogden Smith, of the city of New Orleans, individually and as one of the executors of the last will and testament of Richard H. Allen, deceased, and of Gaston Smith, T. A. Smith, Fred. W. Smith, Mrs. Nellie Smith, widow, of Houchens, and of J. F. Aucoin, in his capacity of administrator of the succession of Thos. H. Allen, deceased, and of J. B. Turner and William A. Turner respectfully represents:

That there is manifest error, to their prejudice, in, and that they are aggrieved by, the final decree and judgment rendered in the above-entitled cause by the supreme court of Louisiana on June fourteenth, 1897, which said decree & judgment has become final, and that the said supreme court rendering said judgment was and is

the highest court of the State of Louisiana in which a decision of said cause can or could be had.

Petitioners represent that in the decision of said cause was drawn
368 in question the proper interpretation and effect of the act of the Congress of the United States entitled "An act making appropriations for sundry civil expenses of government," approved March 2d, 1895, and the rights, titles, privileges, and immunities of all of your petitioners, in their aforesaid capacities and individually, as the true beneficiaries and owners of the bounty appropriation or fund of eleven thousand five hundred & sixty-nine $\frac{65}{100}$ dollars ($11,569.65) which the Government of the United States paid in July, 1896, to the executors of said succession of Richard H. Allen under the provisions & appropriations of said act of Congress for the use & benefit of the beneficiaries and proper owners of said fund under said act.

That the said bounty fund or appropriation of $11,569.65, made under said act of Congress to producers of sugar who had complied with the provisions of the bounty law as contained in Schedule E of tariff act of October 1st, 1890, was claimed in said cause by your petitioners as accruing to your petitioners as heirs-at-law of the late Richard H. Allen and as an unwilled asset falling into the unbequeathed residuum of said estate, and which said claim was also urged in said cause by your petitioner Ogden Smith, in his capacity of co-executor of the succession of Richard H. Allen, deceased, in favor of the said heirs-at-law of said late Richard H. Allen on the ground that the said late Richard H. Allen and, after his death, on September 19th, 1894, his estate and his heirs-at-law inheriting said estate and all unbequeathed assets thereof, were the producers of sugar to be recompensed and to become the beneficiaries of said
369 bounty appropriation on all sugars "actually manufactured and produced in the United States, testing not less than 80 degrees by the polariscope, from beet, sorghum, or sugar cane grown & produced within the United States during that part of the fiscal year ending June 30th, 1895, comprised in the period commencing August 28th, '94, and ending June 30th, 1895, both days inclusive," and as such were the proper and true owners of said bounty fund within the true intent and meaning of said act of Congress of March 2d, 1895.

That the said claim so presented by and on behalf of your said petitioners in said cause and on the trial thereof were opposed, denied, and resisted by Mrs. Bettie Allen, individually and as co-executrix of the succession of Richard H. Allen, deceased, and by W. F. Collens, as co-executor of the succession of Richard H. Allen, deceased, and also by Mrs. Jennie Boyle, wife of John Boyle; Mrs. Bettie De Berry, wife of A. W. De Berry, and Mrs. Ellen B. Baker, divorced wife of Charles Baker, the said Mrs. Bettie Allen, individually and as executrix, and the said W. F. Collens, as co-executor, claiming the said bounty fund or appropriation in the interest of and for said Mrs. Bettie Allen, as the particular legatee of the crops of the Rienzi plantation, and the said Mrs. Boyle, Mrs. Bettie De Berry, and Mrs. Ellen B. Baker claiming the said bounty fund or

appropriation for themselves, in certain proportions, as heirs-at-law of the said late Richard H. Allen, notwithstanding the clause of disinherison and exclusion from the estate under the will of said late Richard H. Allen; that in said cause an issue was thus made and formed between your petitioners, as heirs-at-law of
370 Richard H. Allen, deceased, together with the said Ogden Smith, as co-executor of the late Richard H. Allen, on one side, as plaintiffs or opponents, claiming the said bounty fund for your said petitioners, as heirs-at-law of said late Richard H. Allen, and as being entitled thereto as an unwilled asset of said succession or estate, and between Mrs. Widow Bettie Allen, individually and as executrix, together with W. F. Collens, as co-executor of the late Richard H. Allen, on the other side, as opponents or defendants, claiming the said bounty fund for Widow Bettie Allen, as particular legatee of the crops of the Rienzi plantation, and also between all of them and the said Mrs. Jennie Boyle, Bettie De Berry, and Ellen B. Baker, on the other side, as opponents or defendants, claiming the said bounty fund for themselves, in certain proportions, as hereinabove set forth and mentioned.

That on the issues thus formed the decision and final decree and judgment of the supreme court of Louisiana was rendered, and that the said decision, final decree, & judgment thus rendered by said court in said cause was against the right, title, privilege, and immunity, claim, ownership, and demand of your petitioners, as heirs-at-law of said Richard H. Allen, as to one-half of the said bounty fund or appropriation, viz., as to the sum of five thousand seven hundred and eighty-four dollars or thereabout ($5,784), claimed under the aforesaid act of Congress.

371 Petitioners further show that they and each of them, individually and in their representative capacities aforesaid, desire to have the said erroneous decision and judgment of the supreme court of Louisiana reviewed and corrected by the Supreme Court of the United States, under the provisions of section 709 and other sections of the Revised Statutes of the United States, as to half of said bounty fund, which was denied and refused to them, but was improperly and erroneously allowed and awarded to Widow Bettie Allen individually and upon the annexed assignment of errors and upon other plain errors apparent on the face of the record.

Wherefore petitioners pray that a writ of error may be allowed, returnable to the Supreme Court of the United States, as the law directs, upon your petitioners furnishing bond and security therefor in such sum as may be fixed by your honor, and that the said Widow Bettie Allen, individually and as executrix of the succession of the late Richard H. Allen, and also W. F. Collens, as co-executor of the late Richard H. Allen, and also Mrs. Jennie Boyle and her husband, John Boyle, to assist her; Mrs. Bettie De Berry and her husband, A. W. De Berry, to assist her, and Mrs. Ellen B. Baker, divorced wife of Charles Baker, a *femme sole*, each and all and every one of them be cited to appear and answer in the premises according to law.

372 And your petitioners pray for all general and equitable relief needful in the premises.

HENRY CHIAPELLA,
Attorney for J. B. Turner and W. A. Turner.
L. F. SUTHON,
Per HENRY CHIAPELLA,
Attorney for Ogden Smith, T. A. Smith, Gaston Smith, F. W. Smith, and Widow Nellie Houchens.
FENNER, HENDERSON & FENNER,
Attorneys for J. F. Aucoin, Administrator of Estate T. H. Allen,
Per HENRY CHIAPELLA.
CLAY KNOBLOCK & SON,
Attorneys for Ogden Smith, Co-executor Estate Richard H. Allen,
Per HENRY CHIAPELLA.

373 *Order.*

Let the prayer of the foregoing petition be granted, and let a writ of error be allowed as prayed for upon petitioners furnishing bond with solvent security in the sum of three hundred dollars, conditioned as the law directs.

New Orleans, August 13th, 1897.

L. B. WATKINS,
Acting Chief Justice and Senior Associate Justice, the Chief Justice being Absent on Leave from the State of Louisiana.

374 [Endorsed:] No. 12331. Supreme court of Louisiana. Succession of Richard H. Allen. Petition for writ of error by Ogden Smith, as executor of succession of Richard H. Allen and individually, and by the heirs-at-law of the deceased. Filed 14 Aug., 1897. T. McC. Hyman, clerk.

375 Supreme Court of the United States.

OGDEN SMITH, Co-executor of the Succession of Richard H. Allen and Individually; Gaston Smith, T. A. Smith, Fred. W. Smith, Mrs. Nellie Houchens, *née* Smith, Widow of Houchens; J. B. Turner, W. A. Turner, and J. L. Aucoin, Administrator of the Succession of Thomas H. Allen, Plaintiffs in Error,

vs.

Mrs. BETTIE ALLEN, Widow of Richard H. Allen, Individually and as Testamentary Executrix of the Succession of the Late Richard H. Allen, and W. F. Collens, Co executor of the Succession of Richard H. Allen, and Mrs. Jennie Boyle and John Boyle, Her Husband, to Assist & Authorize Her; Mrs. Bettie De Berry and A. W. De Berry, Her Husband, to Assist & Authorize Her, and Mrs. Ellen B. Baker, Divorced Wife of Charles Baker, a *Femme Sole*, Defendants in Error.

In error to the supreme court of the State of Louisiana.

Assignment of Errors.

376 Assignment of errors.

I. That the State court erred in holding that Widow Bettie Allen, defendant in error, is entitled to and in awarding to her one-half of the bounty fund in controversy, which was paid by the Government of the United States to the executors of succession of Richard H. Allen under the act of Congress approved on March 2d, 1895.

II. That the State court erred in not holding that the estate of the late Richard H. Allen after his death and his heirs-at-law, upon whom devolved the whole succession and the residuum, after the bequeathing of a few particular legacies in money and property, were not the sole and true beneficiaries and owners of the whole bounty fund or appropriation paid under said act of Congress, and in not awarding to them the whole of said amount in controversy herein as being entitled thereto solely and exclusively.

III. That the State court erred in not rejecting as erroneous and unfounded in law, justice, and equity under the facts of the case any and all claims of Widow Bettie Allen to the said bounty fund or appropriation or to any part thereof.

IV. That the State court erred in allowing and awarding
377 to Widow Bettie Allen, as particular legatee of the net proceeds of the crops of the Rienzi plantation, any part of the bounty fund or appropriation in controversy, and in considering her in the light of either a producer or manufacturer of sugar for sugars actually produced & manufactured during the period extending from August 28th, 1894, to June 30th, 1895, and in treat-

ing her as beneficiary or owner of any part of said bounty fund or appropriation in controversy.

V. That the State court erred in not holding that the late Richard H. Allen before his death was the sole producer of sugar to be recompensed or compensated for the spoliations caused by the repeal of the law allowing the bounty on sugar, and after his death [that][1]* his general estate [was][2]* [not][3]* and his heirs-at-law as his successors to the whole of said bounty fund or appropriation as the true and legitimate producers and beneficiaries.

VI. That the State court, while correctly deciding and holding that the deceased Richard H. Allen, by planting, cultivating, & growing the crop of sugar cane up to the date of his death, on September 19th, 1894, had thereby fairly earned and become entitled to one-half of the bounty fund or appropriation allowed under said act of Congress and in controversy in the present cause, did improperly and illegally restrict his right and that of his estate and of his heirs-at-law, continuing his person, to one-half of said bounty fund or appropriation, instead of extending it to the whole, as was meant and intended by said act of Congress.

378 VII. That the State court, while correctly deciding and holding that the deceased Richard H. Allen was a "producer" within the meaning & intendment of said act of Congress, and after his death his heirs-at law, continuing his person, and awarding to him and them the one-half of said bounty fund or appropriation, did improperly and illegally restrict his right and that of his estate and of his said heirs-at-law to the said one-half of said bounty fund or appropriation, instead of extending it to the whole, as was meant and intended by the said act of Congress.

VIII. That the State court erred in not holding that the late Richard H. Allen, and after his death his estate and heirs-at-law, continuing his person, were the sole "producers" which were meant and intended to be indemnified under said act of Congress.

IX. That the State court erred in not holding that producers of sugar were first and foremost to be indemnified under said act of Congress, and in not holding that manufacturers of sugar who had not been producers were not contemplated to be indemnified under the provisions of the said act of Congress.

X. That the State court erred in giving undue importance to the manufacturer who was not a producer of sugar, and
379 that it was not sufficient to hold that the production of sugar was the first or primary consideration, and the manufacture of sugar the second or subsidiary consideration in the eye of Congress when passing the law, but that the decision should have been that the production of sugar was the paramount and sole consideration.

[* Words enclosed in brackets erased in copy.]

XI. That the State court, while correctly deciding that the testator, by reason of his having planted and cultivated the crop at his own expense and with his own funds, had at the time of his death, on September 19th, 1894, earned the value of the crop, did not go far enough, and erred in holding that he had earned a proportionate share of the bounty fund or appropriation, but that the decision should have been that he had thereby earned the whole of the bounty money or appropriation, amounting to the sum of eleven thousand five hundred and sixty-nine $\frac{35}{100}$ dollars or thereabout.

XII. That the State court, while recognizing that "in determining who was the producer (under the act of Congress) it was not possible to exclude from all consideration the labor applied under the direction of the owner and the amount expended by him," erred in not giving their full weight to these important factors and in restricting the right of such producer to a proportionate amount of the bounty fund or appropriation, instead of extending it to the whole bounty fund or appropriation.

380 XIII. That the State court, after having decided the right of Mrs. Bettie Allen to be those of a particular legatee of the "net proceeds" of the crop which was being cultivated by the executors under the express terms of the will, erred in viewing her in the light of either a producer or manufacturer of the crop and in granting to her a *pro rata* of the bounty appropriation accordingly.

XIV. That the State court erred if it viewed Mrs. Bettie Allen, after the death of Mr. Richard H. Allen, on September 19th, '94, in the light of either a producer or manufacturer of sugar, since the crop of cane was being produced, cultivated, and manufactured into sugar by the executors of the succession of Richard H. Allen, and since she had no interest therein and did not in any way contribute to or participate in said production, cultivation, or manufacture of sugar, but that, on the contrary, her rights were limited to receiving from such executors in cash the net proceeds of sale of such sugar crop after its production, cultivation, and manufacture into sugar by the executors, if any such net proceeds existed after all expenses, taxes, and other charges paid, as expressly provided for by the terms of the will.

XV. That the State court, while searching for the true beneficiary of the bounty fund, erred in endeavoring to determine the
381 relative value of the interest of each producer and in not holding that Mr. Richard H. Allen while alive and his estate after his death and his heirs-at-law continuing his person were the sole producers of the crop which was subsequently actually manufactured into sugar, and that Mrs. Widow Bettie Allen's rights as particular legatee of the net proceeds of the crop were restricted to the profits which would be realized from the sale of the sugar after all debts paid and contingent upon such a result, and did not exist otherwise, and that said court erred in not holding that under such a state of facts Mrs. Bettie Allen could never be looked upon either as a producer or manufacturer of sugar, and in not excluding her

from the bounty fund and appropriation, either for the whole or for a part, under the aforesaid act of Congress.

Respectfully submitted.

HENRY CHIAPELLA,
Attorney for J. B. and W. A. Turner, Plaintiffs in Error.
CLAY KNOBLOCK & SON,
Attorneys for Ogden Smith, Co-executor, Plaintiff in Error,
Per HENRY CHIAPELLA, *Attorney.*
FENNER, HENDERSON & FENNER,
Attorneys for J. L. Aucoin, Administrator, Plaintiff in Error,
Per HENRY CHIAPELLA, *Attorney.*
L. F. SUTHON,
Attorney for Smith Heirs, Plaintiffs in Error,
Per HENRY CHIAPELLA, *Attorney.*

New Orleans, Louisiana, August 14th, 1897.

382 [Endorsed:] No. 12331. Supreme court of Louisiana. Succession of Richard H. Allen. Assignment of error. Filed Aug. 14th, 1897. Paul E. Mortimer, dep. clerk.

383 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, in the matter of succession of Richard H. Allen, deceased, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Ogden Smith, individually and as one of the testamentary executors of the succession of the late Richard H. Allen; Gaston Smith, T. A. Smith, F. W. Smith, Mrs. Widow Nellie Houchens, *née* Smith; J. B. Turner, W. A. Turner, J. L. Aucoin, administrator of the succession of T. H. Allen, plaintiffs in error, and Mrs. Widow Bettie Allen, individually and as one of the testamentary executrix of the succession of the late Richard H. Allen, and also W. F. Collens, as co-executor of the succession of the late Richard H. Allen, and also Mrs. Jennie Boyle and her husband, John Boyle, to assist her; Mrs. Bettie De Berry and her husband, A. W. De Berry, to assist her, and Mrs. Ellen B. Baker, divorced wife of Chas. Baker, a *femme sole*, defendants in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Constitution or of a treaty

384 or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemp-

tion specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Ogden Smith, individually and as executor of the succession of Richard H. Allen, deceased; Gaston Smith, T. A. Smith, Fred. W. Smith, Mrs. Widow Nellie Houchens, *née* Smith; J. B. Turner, W. A. Turner, and J. L. Aucoin, as administrator of the succession of T. H. Allen, plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 13th day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
L. B. WATKINS,
Acting Chief Justice of the Supreme Court of Louisiana and Senior Associate Justice, the Chief Justice Being Absent on Leave from the State of Louisiana.

385 [Endorsed:] No. 12331. Supreme court of Louisiana. Succession of Richard H. Allen. Writ of error. Writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this August fourteenth, one thousand eight hundred and ninety-seven. Henry Chiapella, attorney of plaintiffs in error. Filed Aug. 14, 1897. T. McC. Hyman, clerk.

386 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Mrs. Widow Bettie Allen, individually and as testamentary executrix of the succession of the late Richard H. Allen, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of

Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Ogden Smith, individually and as co-executor of the succession of Richard H. Allen; Gaston Smith, T. A. Smith, Fred. W. Smith, Mrs. Widow Nellie Hpuchens, *née* Smith; J. B. Turner, W. A. Turner, and J. L. Aucoin, as administrator of the succession of T. H. Allen, are plaintiffs in error, and Widow Bettie Allen, individually and as co-executor of the succession of Richard H. Allen, and W. F. Collins, as co-executor of the succession of Richard H. Allen, and also Mrs. Jennie Boyle and her husband, John Boyle, to assist her; Mrs. Bettie De Berry and her husband, A. W. De Berry, to assist her, and Mrs. Ellen B. Baker, divorced wife of Chas. Baker, a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Ogden Smith, individually and as co-executor of the succession of Richard H. Allen, and the other plaintiffs in error hereinabove fully named, individually and in their representative capacities, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

L. B. WATKINS,
Acting Chief Justice of the Supreme Court of the State of Louisiana and Senior Associate Justice, the Chief Justice Being Absent on Leave from the State of Louisiana.

387 [Endorsed:] Mrs. Bettie Allen. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby acknowledge to have received a certified copy of the within citation and accept service of same. This, New Orleans, La., on August 16th, A. D. 1897.

J. F. PIERRON,
Att'y for Mrs. Bettie Allen, Individually & as Executrix.
BEATTIE & BEATTIE,
Attorneys — W. F. Collins, Ex'r.

388 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to W. F. Collins, as co-executor of the succession of the late Richard H. Allen, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the

State of Louisiana, at New Orleans, wherein Ogden Smith, individually and as co-executor of the succession of Richard H. Allen; Gaston Smith, T. A. Smith, Fred. W. Smith, Mrs. Widow Nellie Houchens, *née* Smith; J. B. Turner, W. A. Turner, and J. L. Aucoin, as administrator of the succession of T. H. Allen, are plaintiffs in error and Widow Bettie Allen, individually and as co-executor of the succession of Richard H. Allen, and W. F. Collins, as co-executor of the succession of Richard H. Allen, and also Mrs. Jennie Boyle and her husband, John Boyle, to assist her; Mrs. Bettie De Berry and her husband, A. W. De Berry, to assist her, and Mrs. Ellen B. Baker, divorced wife of Chas. Baker, a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Ogden Smith, individually and as co-executor of the succession of Richard H. Allen, and the other plaintiffs in error hereinabove fully named, individually and in their representative capacities, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

L. B. WATKINS,
Acting Chief Justice of the Supreme Court of the State of Louisiana and Senior Associate Justice, the Chief Justice Being Absent on Leave from the State of Louisiana.

389 [Endorsed:] W. F. Collins. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby acknowledge to have received a certified copy of the within citation and accept service of same. Done at New Orleans, La., this 18th of August, 1897.

TAYLOR BEATTIE,
C. R. BEATTIE,
Att'ys of W. F. Collins, Executor.

390 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Mrs. Ellen B. Baker, divorced wife of Chas. Baker, a *femme sole*, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Ogden Smith, individually and as co-executor of the succession of Richard H. Allen; Gaston Smith, T. A. Smith, Fred. W. Smith, Mrs. Widow Nellie

Houchens, *née* Smith; J. B. Turner, W. A. Turner, and J. L. Aucoin, as administrator of the succession of T. H. Allen, are plaintiffs in error and Widow Bettie Allen, individually and as co-executor of the succession of Richard H. Allen, and W. F. Collins, as co-executor of the succession of Richard H. Allen, and also Mrs. Jennie Boyle and her husband, John Boyle, to assist her; Mrs. Bettie De Berry and her husband, A. W. De Berry, to assist her, and Mrs. Ellen B. Baker, divorced wife of Chas. Baker, a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Ogden Smith, individually and as co-executor of the succession of Richard H. Allen, and the other plaintiffs in error hereinabove fully named, individually and in their representative capacities, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

L. B. WATKINS,
Acting Chief Justice of the Supreme Court of the State of Louisiana and Senior Associate Justice, the Chief Justice Being Absent from the State of Louisiana on Leave.

391 [Endorsed:] Mrs. Ellen B. Baker. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby acknowledge to have received a certified copy of the within citation and accept service of same.

New Orleans, this 17th of August, 1897.

L. DE POORTER,
Att'y for Mrs. Ellen B. Baker, Divorced Wife of Charles Baker, Femme Sole.

392 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Mrs. Jennie Boyle and John Boyle, her husband, to assist & authorize her, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Ogden Smith, individually and as co-executor of the succession of Richard H. Allen; Gaston Smith, T. A. Smith, Fred. W. Smith, Mrs. Widow Nellie Houchens, *née* Smith; J. B. Turner, W. A. Turner, and J. L. Aucoin, as administrator of the succession of T. H. Allen, are plaintiffs in error and Widow Bettie Allen, individually and as co-executor of the succession of

Richard H. Allen, and W. F. Collins, as co-executor of the succession of Richard H. Allen, and also Mrs. Jennie Boyle and her husband, John Boyle, to assist her; Mrs. Bettie De Berry and her husband, A. W. De Berry, to assist her, and Mrs. Ellen B. Baker, divorced wife of Chas. Baker, a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Ogden Smith, individually and as co-executor of the succession of Richard H. Allen, and the other plaintiffs in error hereinabove fully named, individually and in their representative capacities, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

L. B. WATKINS,
Acting Chief Justice of the Supreme Court of the State of Louisiana and Senior Associate Justice, the Chief Justice Being Absent on Leave from the State of Louisiana.

393 [Endorsed:] Mrs. Jennie Boyle & John Boyle. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby acknowledge to have received a certified copy of the within citation and accept service of same.

This, New Orleans, La., on August 17th, 1897.

L. DE POORTER,
Att'y for Mrs. Jennie Boyle and her Husband, John Boyle.

394 UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Mrs. Bettie De Berry and A. W. De Berry, her husband, to assist and authorize her, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Ogden Smith, individually and as co-executor of the succession of Richard H. Allen; Gaston Smith, T. A. Smith, Fred. W. Smith, Mrs. Widow Nellie Houchens, *née* Smith; J. B. Turner, W. A. Turner, and J. L. Aucoin, as administrator of the succession of T. H. Allen, are plaintiffs in error and Widow Bettie Allen, individually and as co-executor of the succession of Richard H. Allen, and W. F. Collins, as co-executor of the succession of Richard H. Allen, and also Mrs. Jennie Boyle and her husband, John Boyle, to assist her; Mrs. Bettie De Berry and her husband, A. W. De Berry, to assist her, and Mrs. Ellen B. Baker,

divorced wife of Chas. Baker, a *femme sole*, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Ogden Smith, individually and as co-executor of the succession of Richard H. Allen, and the other plaintiffs in error hereinabove fully named, individually and in their representative capacities, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Supreme Court of the State of Louisiana.]

L. B. WATKINS,
Acting Chief Justice of the Supreme Court of the State of Louisiana and Senior Associate Justice, the Chief Justice Being Absent on Leave from the State of Louisiana.

395 [Endorsed:] Mrs. Bettie De Berry & A. W. De Berry. Supreme court of the State of Louisiana. No. 12331. Succession of Richard H. Allen. Citation. Sheriff's return.

I hereby acknowledge to have received a certified copy of the within citation and accept service of same.

New Orleans, La., this 17th of August, 1897.

L. DE POORTER,
Attorney for Mrs. Bettie De Berry & her Husband, A. W. De Berry.

Endorsed on cover: Case No. 16,670. Louisiana supreme court. Term No., 168. Mrs. Bettie Allen, individually and as executrix, and W. F. Collins, co-executor, of the succession of Richard H. Allen, deceased, plaintiffs in error, *vs.* Ogden Smith, co-executor of the last will and testament of Richard H. Allen, deceased, *et al.* Filed September 18, 1897. Case No. 16,685. Term No., 176. Ogden Smith, individually and as executor of the succession of Richard H. Allen, deceased, *et al.*, plaintiffs in error, *vs.* Mrs. Widow Bettie Allen, individually and as testamentary executrix of the succession of Richard H. Allen, deceased, *et al.* Filed October 11, 1897.

8780

Nos. 168 and 176.
Brf. of Beattie for Mrs. Allen.

Office Supreme Court U. S.
FILED
DEC 31 1898
JAMES H. MCKENNEY,

Filed Dec. 31, 1898.

SUPREME COURT OF THE UNITED STATES.

No. 168.

MRS. BETTIE ALLEN AND W. F. COLLINS,
EXECUTORS, PLAINTIFFS IN ERROR,

versus

OGDEN SMITH, EXECUTOR, ET ALS., DEFENDANTS IN ERROR.

No. 176.

OGDEN SMITH, EXECUTOR, ET ALS., PLAINTIFFS IN ERROR,

versus

MRS. BETTIE ALLEN AND W. F. COLLINS,
EXECUTORS, DEFENDANTS IN ERROR.
[CONSOLIDATED]

BRIEF FOR MRS. BETTIE ALLEN, AS EXECUTRIX, AND INDIVIDUALLY, AND W. F. COLLINS, EXECUTOR, PLAINTIFFS IN ERROR.

CHARLTON R. BEATTIE,
TAYLOR BEATTIE,
Of Counsel.

Thomason, Print., 526 Natchez Street, N. O.

SUPREME COURT OF THE UNITED STATES.

No. 168.

MRS. BETTIE ALLEN AND W. F. COLLINS, EXECUTORS, PLAINTIFFS IN ERROR,

versus

OGDEN SMITH, EXECUTOR, ET ALS., DEFENDANTS IN ERROR.

No. 176.

OGDEN SMITH, EXECUTOR, ET ALS., PLAINTIFFS IN ERROR,

versus

MRS. BETTIE ALLEN AND W. F. COLLINS, EXECUTORS, DEFENDANTS IN ERROR.

[CONSOLIDATED]

BRIEF FOR MRS. BETTIE ALLEN, AS EXECUTRIX, AND INDIVIDUALLY, AND W. F. COLLINS, EXECUTOR, PLAINTIFFS IN ERROR.

Richard H. Allen died in the Parish of Lafourche, State of Louisiana, on the 19th of September, 1894, leaving considerable estate and a last will and testament which has been admitted to probate by the proper tribunal.

After a long controversy his estate has been settled as to all of its assets save the distribution of the sum col-

lected by the executors from the United States for the bounty paid upon the sugar produced on the Rienzi Plantation owned by the deceased. This sugar was made, produced and manufactured after his death from cane planted and cultivated on the plantation during his lifetime, but in accordance with the climate and seasons in Louisiana only made into sugar some months after his death.

Under the Act of Congress, known as the McKinley bill, Mr. Allen had complied with the provisions demanded from those making sugar in the United States by applying for a license and giving bond. There is no issue as to this fact.

Previous to his death, that is, on or about the 28th of August, 1894, the Congress repealed the Bounty Act, thus denying to the producers any remuneration in that way.

Under the settled jurisprudence of this Court, this was clearly within the power and authority of the Legislature.

In Salt Co. vs. East Saginaw, 13 Wallace, 379, this Court said:

"Such a law is not a contract except to bestow the promised bounty upon those who earn it, so long as the law remains unrepealed. There is no pledge that it shall not be repealed at any time. In its nature it is a general law regulative of the internal economy of the State, and as such subject to repeal and alteration as a law prohibiting the killing of game in certain seasons of the year. Its continuance is a matter of public policy only; and those who rely upon it must base their reliance on the free and voluntary good faith of the Legislature." See also Weler vs. Cork, 97 U. S. 542.

Such also seems to have been the real gist of the decision in U. S. vs. Realty Co., 163 U. S. 427, where the Court decided that where Congress appropriated moneys to pay

such bounties, it did not lie in the mouth of the merely executive officers of the government to invalidate the Act.

Then in the winter of 1894, when the sugar was made on the Rienzi Plantation from cane cultivated thereon during the spring and summer of that year, there was no provision of law giving a bounty therefor.

Now, to whom did the crop of 1894 made on that plantation go? Under the will of Mr. Allen and under the judgment of the Supreme Court of Louisiana, which has not only become *res adjudicata*, but which has been finally executed, the whole proceeds of the crop less the cost of producing it from the date of the death of Mr. Allen has been paid over to Bettie Allen, his widow and executrix, and the plaintiff in error in No. 168. See p. 54 of Transcript for judgment of District Court, and p. 132 for judgment of Supreme Court affirming that part.

This decision was based on the expression of the will to be found at p. 63 of the transcript:

"As I fear property will be very low, I give my executors five years to work for a good price; in the meantime that they are waiting to sell, the place can be rented or worked so as to pay all taxes and other charges, any over that to go to Mrs. Bettie Allen's credit."

Now, then, in 1895, on the 2d of March, the Congress passed a bill to pay a bounty upon sugars made in the United States during the year 1894.

This Act reads as follows:

"That there shall be paid *to those producers* who complied with the provisions of the bounty law as contained in Schedule E of the tariff act of October 1, 1890, by filing a notice of application for license and bond therein required, prior to July 1, 1894, and who would have been entitled to receive a license as provided for in said act, a bounty of

eight-tenths of a cent a pound on the *sugar actually manufactured and produced* in the United States, testing not less than eighty degrees by the polariscope, from beets, sorghum or sugar cane, grown or produced within the United States during that part of the fiscal year ending June 30, 1895, comprised in the period commencing August 28, 1894, and ending June 30, 1895, both days inclusive; and for this purpose the sum of $5,000,000, or so much thereof as may be necessary, is hereby appropriated; provided, that no bounty shall be paid to any person engaged in refining sugars which have been imported into the United States, produced in the United States, upon which the bounty herein provided has already been paid or applied for." (Italics, of course, ours.)

Under this law and the facts, as stated, the Supreme Court of Louisiana decided, on the final hearing of this case, that the bounty given by the United States for that crop should be divided into two parts—one-half to go to Mrs. Allen, as the owner of one-half of the plantation, and the other half to go to the other legatees of the other half.

In this we contend there was error.

The Supreme Court of Louisiana seems to have based the decision on the fact that up to his death Mr. Allen had paid a large part of the expenses, a part which the Court estimates at about one-half of the cost of production, and that the other half was paid by Mrs. Allen under the provision of the will which required the cost of the crop to be taken out of it, and then the remainder paid over to her.

Suppose this to be the fact, and we will not contend against it, what, we ask, has that to do with the fact of production of sugar? The bounty is granted not to the producer of cane, but to the producer of sugar made from cane produced or grown in the United States. Now, it is true, Mr. Allen paid a large part of the expense of the

cultivation, but did he produce one pound of the sugar? The evidence shows he died in September, 1894, and the making the crop (we mean the manufacture of the sugar) only began in the latter part of October, 1894.

Who then produced this crop of sugar? What is a producer or manufacturer? To produce is defined to be "the bringing into form or shape, especially for commercial purposes, manufacture, make, as to produce clothing." *Standard Dictionary.*

Literally speaking, it might be said that the real producer is only he who does the actual work of production. But in common parlance this is not so understood. It is understood to be he who furnishes the capital and the place and the means generally to shape the rough article into the article of common use. He who pays the expense. Here the whole charge was paid by Mrs. Allen. She was to receive the proceeds of the crops after paying the expenses. She did pay, and in one year, 1895, it is shown that she paid more than it came to; and the Court held her to pay this out of her pocket.

The error of the Supreme Court of Louisiana, it seems to us, lies in assuming that R. H. Allen produced any part of this crop. The Court says (p. 146):

"After deciding that to the date already mentioned the testator was the producer, etc."

This, we contend, was the error into which the Court was led, from which followed its erroneous decree. Allen did aid in producing or raising the cane, but nothing did he do towards producing or manufacturing sugar. He died before that could be done and left the whole crop, less the cost of taking it off, to his wife. In other words, he en-

tailed upon her the cost of production, which made her the producer, the manufacturer.

We contend that the whole issue here depends upon the interpretation to be placed upon the words in the law of the United States. That is, who was the producer? The State Court says it has decided that under the State law the bounty formed no part of the crop of sugar.

The decision in Delogny vs. Creditors, 48 La. An. 488, merely goes to the effect that the pledgee of the crop under the laws of this State was not entitled to receive the bounty because it really formed no part of the thing pledged.

In Webre vs. Beltran, 47 La. An. 202, the creditor of the owner of a plantation took out the license in his own name, carried on the plantation, made the sugar, and our Supreme Court decided that the bounty belonged to him up to the amount to which he was a creditor to the owner.

This case, it would seem to us, is favorable to Mrs. Allen. She made the sugar, she paid the expenses, and ought to receive the bounty, the very getting of which she paid for by paying for not only the manufacture of the sugar, but by paying the expenses of the State Bureau, gotten up for the purpose of keeping the statistics of weights and tests, so as to make the proof required by the United States Treasury Department, and which, we may here state, were kept by a former United States Internal Revenue officer, and which were, moreover, so accurately kept that the proof was accepted as good.

The Supreme Court of Louisiana decided the issue, as we have said, between the parties by saying each was owner of one-half and therefore must each receive one-half of the bounty. But while Mrs. Allen was only the owner in full

ownership of the one-half, she was the owner of the whole of the produce of the plantation. She was charged with the expense, and was to receive the net product. So stringently did the Courts of Louisiana construe this clause of the will that, as we have already said, in the case of the crop of 1895, she was forced to pay a deficit out of the profits of 1894. Now, it was perfectly legitimate for Mr. Allen to bequeath the proceeds of the plantation to the other persons, and the use or usufruct to Mrs. Allen, his wife, and so he did. The fruits go to the owner, but may go to another by contract or, as in this case, by will.

We believe that under the plain letter of the law the determination must be that Mrs. Allen, the person who paid for the production of the sugar, the cost of that production being taken out of the price coming to her, she must be held to be the producer. That this is a mere question of the interpretation of the Statute of the United States with which the State law has nothing to do.

We now proceed to answer some of the arguments made by the counsel of the other side.

We have seen that in the cases of Salt Co. vs. East Saginaw, 13 Wallace, 379, and in Welch vs. Cook, 97 U. S. 542, this Court has decided that bounties and gratuities are always within the legislative control and are not property in the sense that they may not be taken away by repeal. It is urged that there are other decisions of this Court that hold the contrary, and we have not been able to find them. The cases quoted as upholding such doctrine do not do so in our estimation.

In the case Comegys vs. Vasse, 1 Peters, 193, the question was as to the rights against certain sums paid by Spain for

wrongs done our citizens. Vasse became insolvent and he was proceeded against as an insolvent. The Court decided that the right which he had to the sum awarded by the treaty was a right of property which, under the bankrupt law, passed to his creditors. The amount was not a mere gratuity given the parties who had suffered damage, but was in the nature of a contractual payment for property.

The case of Sheppard vs. Taylor, 5 Peters, 675, is of same nature, arising under the same treaty with Spain. There again the money paid over by Spain and held by the United States, was held, not a mere gratuity but a debt, a right of property collected from Spain by our Government for the unjust capture of one of our vessels, and that on payment being made for the unjust seizure, the privilege or lien of the sailors attached to the sum paid, just as it would have done had the ship been returned.

In Emerson vs. Hall, 13 Peters, 409, which was a case in which the Congress had appropriated a sum to "be paid over to the said Beverly Chew, and the legal representatives of the said William Emerson and Edward Lorrain, respectively," the creditors of Emerson claimed the amount as necessary to pay his debts to them. The case went before this Court on a writ of error to the Supreme Court of Louisiana.

The Court says: "In the seizure and prosecution of the vessel for a violation of law, Emerson, with those who cooperated with him, rendered a meritorious service to the public. But he acted under no law, nor by virtue of any authority. And his acts imposed no obligation, either in law or equity, on the Government to compensate him for his services."

"From motives of public policy, the Government might

bestow a suitable reward on the individual in such case; but this would be a gratuity on its part. And if this reward were given to the heirs of such an individual, could it be reached by his creditors? Numerous pensions have been given by law to heirs for the military services of their ancestors, and are these pensions liable to the debts of the ancestors? Under all the provisions of this kind has it ever been supposed that the pension, though given to the legal representatives of the deceased, and on the ground of military service, should be paid to his administrators? No individual can be made a debtor against his will. Voluntary benefits may be conferred on him, which may excite his gratitude, and which, in the exercise of his generosity, he may suitably reward. But this depends on his own volition.

"A claim having no foundation in law, but depending entirely on the generosity of the Government, constitutes no basis for the action of any legal principle. It cannot be assigned. It does not go to the administrator as assets. It does not descend to the heir. And if the Government, from motives of public policy, or any other considerations, shall think proper, under such circumstances, to make a grant of money to the heirs of the claimant, they receive it as a gift or pure donation. A donation made, it is true, in reference to some meritorious act of their ancestor, but which did not constitute a matter of right against the Government."

We think this case clear on the point at issue in this case.

When Mr. Allen died, the Government recognized nothing as due to him. Indeed, as we have already said, he had as yet done nothing to earn one cent of the gratuity offered by the Government. After his death the Government did give to the producer the amount of eight-tenths of a cent bounty, and only in such cases where the proper applications had been made. By the regulations of the Department these sums were paid to administrators or executors, but this rule did not and could not give

title to the sum to those persons who merely received as trustees for the real beneficiary. To use the language of the Court: "It did not go to the administrator as assets." In the case at bar, if the Court was right in the case cited from 13 Wallace, this bounty was a mere donation, given from motives of public policy, to the producer. The sum, then, did not come into the hands of the executors *as assets*. It reached their hands under departmental regulations merely as the trustees of the producer and must be paid over to her.

We again find this question alluded to in Phelps vs. McDonald, 99 U. S. 302. There the claim was for property taken and destroyed during the great war. The decision was that the money in the treasury went to the assignees. It was not a bounty but was property returned to the owner.

The decision in Williams vs. Heard, 140 U. S. 529, is merely to same effect, that where the United States has collected money under a treaty with a foreign nation, for damages done our citizens, the right to that money passes in bankruptcy. Why? Because the money was paid over to the United States as trustee for a debt due the citizen—a property right, not a mere gratuity. Foreign powers are not presumed to make gratuitous gifts to our people.

The whole purport of the jurisprudence on this point seems to be summed up in Blagge vs. Balch, 162 U. S. 439, and the decision appears to be based on the language used in Emerson vs. Hall, 13 Peters. 409.

It is contended that the plaintiff in error, Mrs. Bettie Allen, never took possession of the Rienzi Plantation, on which the cane was produced and on which the sugar was made, and should have demanded the legacy under Article

1626 of the Civil Code of Louisiana. She was expressly exempted by her seizin from being called upon so to do. Civil Code, Art. 1628, is as follows:

"Neither is the testamentary executor, who has the seizin of the effects of the succession, and who is at the same time a legatee, bound to demand the delivery of his legacy; he can retain it in his possession subject to the same restitution."

See also Succession of Boone, 7 La. An. 127; Succession of Ames, 33 La. An. 1328.

It is argued that the end in view in the legislation of Congress in adopting the Bounty Act was the increase of the production of sugar cane. And language of the Supreme Court of Louisiana is quoted to affirm the point. Without hesitation we can say that Congress had no such view. The simple production of sugar cane could never be of benefit to the nation in any way. A few acres of the succulent grass would supply the wants of all the cane eaters. The object in view was the production of sugar for purposes not proper here to discuss. And with that view in mind, the bounty was paid for the production, not of sugar cane or beets or sorghum or maple trees, but for the production *of sugar*, the manufacture of the commercial article from the agricultural product.

But again we say, if the decision is to be based upon the law of Louisiana, we apprehend that the decision of the State Court must govern under the jurisprudence of this Court. But we do contend that the decision is not to be concluded by State law or State jurisprudence, the question is one of interpretation of a statute of the United States. What did the Congress mean when it granted a bounty to the producer? Was it to go only, as the Supreme Court of

Louisiana says, to the owner of the land upon which the cane out of which the sugar is produced is grown? If so, we have lost, for our client only owned the one-half, and the Court has given us that. Rather does it not go to the one who owned the benefit of the crop out of which the cane was made—to the person who was bound under the decision of the Court under Louisiana law to pay for the expenses of the crop—who was charged by the Court with the loss on the crop in the year 1895—under that construction forced upon it by the opponents of Mrs. Allen, urged by and insisted upon by them, and now *res adjudicata* between the parties? If she be not the producer of the crop and sugar, then who is and how? Do they pretend they expended one hour of labor thereon? Do they pretend they expended one dollar for the cultivation of the crop of cane or the manufacture of the sugar? The record bears us out in saying they did no such thing. One of the defendants in error in No. 168, Ogden Smith, one of the co-executors, was paid, as the records show, as overseer for his services on the plantation, and paid by whom? By himself out of his share of the estate? No. By the other parties now siding with him? No; but by the plaintiff in error, Mrs. Bettie Allen, who was, on his suggestion and on that of his co-claimants, forced to pay the loss incurred on the crop of 1895.

The law and the equity is with Mrs. Allen, and such we believe will be the decree of this Court.

Respectfully submitted,

CHARLTON R. BEATTIE,
TAYLOR BEATTIE,
Of Counsel.

Office Supreme Court U. S.
FILED
JAN 18 1899
JAMES H. McKENNEY,
Clerk.

No. 168.

Brief of Pierson for Mrs. Allen

SUPREME COURT OF THE UNITED STATES.

Filed Jan. 18, 1899.

MRS. BETTIE ALLEN AND W. F. COLLINS,
EXECUTORS, PLAINTIFFS IN ERROR,

versus

OGDEN SMITH, EXECUTOR, ET ALS., DEFENDANTS IN ERROR.

No. 176.

OGDEN SMITH, EXECUTOR, ET ALS., PLAINTIFFS IN ERROR,

versus

MRS. BETTIE ALLEN AND W. F. COLLINS,
EXECUTORS, DEFENDANTS IN ERROR.
[CONSOLIDATED]

BRIEF FOR MRS. BETTIE ALLEN, AS EXECUTRIX, AND INDIVIDUALLY, AND W. F. COLLINS, EXECUTOR, PLAINTIFFS IN ERROR.

Thomason, Print., 526 Natchez Street, N. O.

SUPREME COURT OF THE UNITED STATES.

No. 168.

MRS. BETTIE ALLEN AND W. F. COLLINS,
EXECUTORS, PLAINTIFFS IN ERROR,

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versus

MRS. BETTIE ALLEN AND W. F. COLLINS,
EXECUTORS, DEFENDANTS IN ERROR.
[CONSOLIDATED]

BRIEF FOR MRS. BETTIE ALLEN, AS EXECUTRIX, AND INDIVIDUALLY, AND W. F. COLLINS, EXECUTOR, PLAINTIFFS IN ERROR.

SYLLABUS.

"The Sugar Bounty Act of Congress of March 2, 1895, appropriating money to pay bounties to persons who had been prevented by the repeal of the Act of 1890 from obtaining *bounties for sugar manufactured* during the year ending June 30, 1895, after filing notice of

application for license and bond under the Act of 1890, is not unconstitutional." (Our italics.) Syllabus from case of U. S. vs. Realty Co., 163 U. S. 437.

The bounty appropriated in the second clause of the sugar schedule by the Act of Congress of March 2, 1895, is predicated upon the *manufacture and production of sugar* between August 28, 1894, and June 30, 1895, inclusive.

It is not in whole or in part payable to one who only planted or cultivated a crop of *sugar cane* up to September 19, 1894, without manufacturing any portion of it into sugar.

The testator died on September 19, 1894, in Louisiana, owning a growing unmatured crop of sugar cane bequeathed to his widow, subject to the payment of "all taxes and other charges" upon it arising after his death.

The widow was recognized by the Courts in that State as the legatee by particular title and owner of the crop from the day of the testator's death, with all that pertained to the crop and in that condition it was on that day. R. C. C. 1626-1636.

Under the bequest the Courts of that State gave to her all the benefits and avails of the crop from the date of the testator's death, subject to the payment only of those "taxes and other charges" which were incurred after the testator's death.

They gave to her all that pertained to the crop, and in that condition it was in on the day the testator died, including all the expenses which he had incurred up to the day of his death.

Under the same tenure the Courts there held her, as legatee by particular title, individually liable for a deficit of $748.19, which resulted from the planting operations under the will during the year 1895.

The legal heirs, defendants in error herein, in their application to the Supreme Court of Louisiana for a rehearing (Rec. p. 139), judicially admitted the owner-

ship and possession of Mrs. Allen as legatee and therein alleged "that the gestion of (the) executors (in 1894 and 1895) *was exclusively for, and in the interest of widow Bettie Allen, particular legatee of said crops under the * * * will.*"

As such legatee by particular title, the law gives to her "*from the day of the testator's death, a right to the thing bequeathed.*" R. C. C. 1626. And it declares that: "The legacy bequeathed shall be delivered *with everything that appertains to it in the condition in which it was on the day of the donor's decease.*" R. C. C. 1636.

She being executrix with seizin under the will is considered the owner in possession, and is dispensed by law from the formality of demanding delivery from the heirs-at-law. R. C. C. 1628; Succ. Boone, 7 La. An. 128; Succ. Ames, 33 La. An. 1328.

As such legatee by particular title, she was the owner in possession of the crop of growing, unmatured sugar cane left by the decedent on his plantation on September 19, 1894, from that date.

This ownership and possession included all that appertained to the crop, and the condition it was in on September 19, 1894.

The application made by the decedent prior to his death, under the Act of Congress of October 1, 1890, for license to manufacture the crop into sugar, appertained at the time of his death to the crop itself and was a condition the crop was in at that date and as such the application for the license to manufacture it into sugar for a government bounty descended with the crop itself to her as such legatee by particular title.

The crop of sugar cane having, after the investiture of her ownership and possession, been ripened and matured; and the crop at her expense and for her exclusive account having subsequently been actually manufactured and produced into sugar between August 28, 1894, and June 30, 1895; she is thereby identified as the true

and exclusive beneficiary of the bounty fund paid therefor by the government under the Sugar Bounty Act of Congress of March 2, 1895.

As such beneficiary she is entitled, under the Act of March 2, 1895, to the entire bounty fund in controversy.

Such bounty, appropriated months after the testator's death, upon sugars manufactured after his death, did not fall into the unwilled residue of his estate.

It pertained to the crop bequeathed to the widow and passed at the testator's death with it to the widow.

As to such bounty the succession was not open in favor of the heirs-at-law, because the law excludes the legal succession and the heirs-at-law from property disposed of by last will. R. C. C. 886.

If it be considered as an accession to the crop bequeathed, it enured to the benefit of the owner of the property to which it became an accession. R. C. C. 504.

STATEMENT OF THE CASE.

Mrs. Bettie Allen, plaintiff in error in No. 168, claims here, as she claimed in the proceedings before the Courts in Louisiana, that she is the exclusive owner of the fund in controversy, viz: the sum of $11,569.35, which was paid by the United States Government in August, 1896, as a bounty on sugars manufactured in Louisiana between August 28th, 1894, and June 30th, 1895, from sugar cane grown on the Rienzi Plantation on Bayou Lafourche in that State during that period. The Government paid that sum under the provisions of the Act of Congress approved March 2, 1895, or more particularly under the second clause of the Act designated "Bounty on Sugar." See case of United States vs. Realty Co., 163 U. S. 430. The Act is as follows:

"BOUNTY ON SUGAR: That there shall be paid by the Secretary of the Treasury to those producers and manufacturers of sugar in the United States from maple sap, beets, sorghum or sugar cane grown or produced within the United States who complied with the provisions of the bounty law as contained in Schedule E of the tariff act of October first, eighteen hundred and ninety, a bounty of two cents a pound on all sugars testing not less than ninety degrees by the polariscope, and one and three-fourths cents per pound on all sugars testing less than ninety and not less than eighty degrees by the polariscope, manufactured and produced by them previous to the twenty-eighth day of August, eighteen hundred and ninety-four, and upon which no bounty has previously been paid; and for this purpose the sum of two hundred and thirty-eight thousand two hundred and eighty-nine dollars and eight cents is hereby appropriated, or so much thereof as may be necessary.

"That there shall be paid to those producers who complied with the provisions of the bounty law as contained in Schedule E of the tariff act of October first, eighteen hundred and ninety, by filing the notice of application for license and bond therein required, prior to July first, eighteen hundred and ninety-four, and who would have been entitled to receive a license as provided for in said act, a bounty of eight-tenths of a cent per pound on the sugars actually manufactured and produced in the United States testing not less than eighty degrees by the polariscope, from beets, sorghum or sugar cane grown or produced within the United States during that part of the fiscal year ending June thirtieth, eighteen hundred and ninety-five, comprised in the period commencing August twenty-eighth, eighteen hundred and ninety-four, and ending June thirtieth, eighteen hundred and ninety-five, both days inclusive; and for this purpose the sum of five million dollars, or so much thereof as may be necessary, is hereby appropriated; provided, that no bounty shall be paid to any person engaged in refining sugars which have been imported into the United States, or produced in the United

States upon which the bounty herein provided had already been paid or applied for.

"The bounty herein authorized to be paid shall be paid upon the presentation of such proofs of manufacture and production as shall be required in each case by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and under such rules and regulations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

"And for the payment of such bounty the Secretary of the Treasury is authorized to draw warrants on the Treasurer of the United States for such sums as shall be necessary, which sums shall be certified to him by the Commissioner of Internal Revenue, by whom the bounty shall be disbursed, and no bounty shall be allowed or paid to any person as aforesaid upon any quantity of sugar less than five hundred pounds."

It will be noted that the fund was paid by the Government under the second clause of the above Act, and at the rate of 8-10 of one cent per pound "on sugars actually manufactured and produced * * * from * * * sugar cane grown or produced in the United States during that part of the fiscal year ending June 30, 1895, commencing August 30, 1884, and ending June 30, 1895."

It will also be noted that this case conforms with that class of bounty claims under this Act which was designated in the opinion rendered in the cited case (U. S. vs. Realty Co.) as the Gay case, which was there distinguished at page 432 from those claims which existed under the first clause of the Act.

It is important to bear in mind the clause of the Act to which this case belongs, because the period within which the sugar was manufactured and produced has, as we shall

find, a material bearing in determining who was the manufacturer or producer of the sugars upon which this bounty was paid. Also, it is this producer of the sugars mentioned in the Act who became the beneficiary of the Bounty Fund in controversy under the terms of the Act.

As to Mrs. Allen's Claim to the Bounty.

The plaintiff in error, Mrs. Allen, claims here as she did in the Courts in Louisiana, that she is the sole beneficiary under that Act of Congress, of this entire bounty fund, and the exclusive owner thereof; that she is the special legatee or legatee by particular title, under the olographic will of her deceased husband, under the bequest therein contained which bequeaths to her the standing unmatured crop of sugar cane on the Rienzi Plantation left by him to her at his death, on September 19th, 1894; that her title took effect on the day of his death under that bequest, and that she, being also executrix of his estate under the will with seizin, is by the law of Louisiana considered in possession of the thing bequeathed, from the day of the testator's death on which the will took effect; that at the time her ownership was vested in the crop of sugar cane it was unmatured, still standing growing in the field, and it was thereafter matured, under her ownership, and subsequently manufactured and produced into sugar for her account; in short, it was her sugar cane at the time, and it was manufactured for her account long after the death of the testator. The fact that she was the owner of the cane at the time that it was manufactured into sugars under her title as legatee, and for her account, constituted her the "manu-

facturer and producer" of the sugars made from it, within the meaning and intendment of the Act of Congress of March 2, 1895, and this fact identifies her as the sole beneficiary of the bounty under that Act, and upon this she claims that she is entitled to be recognized as the sole owner of this bounty fund paid upon the sugars so manufactured by her, and to a decree of the courts ordering that the entire sum be paid to her.

It will be seen that her ownership of the sugar cane is founded in the bequest in the will of R. H. Allen, deceased, who died at his home, on Bayou Lafourche, on September 19, 1894; and the unmatured condition of the sugar cane standing on the plantation at the date the will containing this bequest to her took effect. It will also be noted that the death of the testator occurred within a very few days after August 28, 1894, the commencement of the period under the Act, within which the sugar must have been manufactured, to entitle the party to the bounty under the Act and at a date before the testator had completely produced any cane, and before he had manufactured any sugars under that Act.

It is conceded by all parties, we believe, that his death occurred before the sugar cane matured or was in a fit condition to be manufactured into sugars. One of the defendants in error, Ogden Smith, also one of the executors under the will, was manager of the plantation for Mr. Allen in 1894, up to the time of his, Allen's death, was a witness on the stand in the District Court and testified as follows: (Rec. p. 100). Was this crop of 1894 all standing at the time Mr. Allen's death? A. Yes, sir? Q. None had been cut? A. No, sir. Q. You were the manager of the plan-

tation? A. Yes, sir. And again, (Rec. p. 101) he was asked: Q. Mr. Allen died a month before the grinding season? A. Yes, sir. But these facts are not contested, as we understand, on this trial.

As stated, the testator at his death left his olographic will with various bequests in favor of different legatees, and in which he named Ogden Smith and W. F. Collins, executors, and his wife, Mrs. Bettie Allen, executrix, of the will which was duly probated and the executors qualified on September 24, 1894. (Rec. p. 62). Ogden Smith was a legatee under the will, and also a legal heir under the law of Louisiana to the unwilled *residuum* of his estate. W. F. Collins was neither an heir nor a legatee under the will. Mrs. Bettie Allen, executrix, was his surviving widow.

Of the Mortuary Proceedings.

Ogden Smith, the executor interested as legal heir in the unwilled *residuum* of the estate, very soon disagreed in the execution of the will, with Collins executor and the executrix. Indeed, he opposed very nearly every bequest in the will except those in which the legal heirs, including himself, were interested. His disagreement with the others was of such character as to render the interpretation of the will by the Courts necessary in the proceedings to execute it.

In order to take the advice of the Court in relation to the matters in dispute between them, the executrix and Collins, Executor, joined in presenting what they denominated a Provisional Account (Rec. p. 68), which they filed in the District Court on January 24, 1895 (Rec. p. 72).

The account was accompanied with their joint petition, in which they proposed, in accordance with their views, an execution of the different bequests in the will, as well as the proper management of the estate under their administration, and including all those matters in dispute about which they deemed the advice and judicial action of the Court necessary (Rec. pp. 66 to 72). They were not, however, then ready to invoke a judicial opinion in relation to the bequest of the crop of 1894 to Mrs. Allen. At the bottom of their account they made the statement (Rec. p. 72): "The executors propose to account for the crop of 1894 as soon as the same is sold, that amount is not accounted for here." Their views and proposals in this proceeding were opposed by the executor Smith, who employed special counsel, and filed on February 5th his petition, wherein he alleges (Rec. p. 72): "That your petitioner disagreed with his co-executors in several particulars, and that he therefore files a final account, in which his co-executors do not concur." In that petition (Rec. p. 73) we find the origin of the present disputation over the ownership of the crop of 1894 at a time before the passage of the Act of Congress of March 2, 1895, appropriating the bounty which is here in dispute, and in which he alleges:

"3. That the crop on the Rienzi Plantation at the time of the death of the testator was part of the realty bequeathed, and belongs to the legatees named in the will to whom the realty is bequeathed, and this is your petitioner's construction of the will, whereas the co-executors claim that said crop belongs exclusively to Mrs. Bettie Allen."

By this it appears that originally it was not contested that the crop of 1894 was bequeathed by the will, and the issue then was whether the crop was the subject of a special

bequest exclusively to Mrs. Allen, or whether it was included in the bequest of the proceeds of the plantation, (when it should be sold) to her and the other legatees named in that bequest. (See these bequests in the will, Rec. p. 63). That fact was the issue as to the crop of 1894 upon which the case went to trial, and upon which it was afterwards heard on the appeal in the Supreme Court of Louisiana, which was decided as reported in the 48th La. An. 1045. It should be borne in mind that Executor Collins and the Executrix, in their joint account and petition, had sought to avoid at that time a dispute over the bequest of the crop to Mrs. Allen, and for the reason the crop had not then been all sold, and the design was to reduce that crop to proceeds in order that the settlement under the bequest might be the more conveniently made with her. They desired to settle the bequest in that way as the simplest form in which the matter could be adjudicated. But, it was never conceded by that arrangement that the bequest to her was limited to the net proceeds, or postponed in effect until after the sale of the crop. She was considered entitled to the net proceeds of the crop, because she was the owner of the crop under the bequest from the date of the death of the testator. It was in this sense that the Supreme Court of Louisiana in the 48th Annual, at page 1045, held that she was entitled to the net proceeds of the crops grown on the plantation pending its sale. Nor can the opinion of the Supreme Court in that case be fairly considered to mean that Mrs. Allen was not the owner of the crop of 1894, from the date of the testator's death. The issue on which that opinion was predicated did not involve any question as to the time when the bequest

of the crop to Mrs. Allen took effect. Nor did the Court there express any opinion upon that subject, but only decided the issue presented in the pleadings, and which involved the simple question whether, as contended by Executor Smith, the crop was part of the realty and passed to the two sets of legatees to whom the proceeds of the realty was bequeathed; or was it a separate bequest of the crop, apart from the realty, specially and exclusively made to Mrs. Allen separately from the other bequests? It had been proposed, as we have seen, in the account of the executrix, to defer the settlement of this question until after the crop had been sold and the taxes and other charges had been ascertained and taken from the gross proceeds of the crop, after which it was proposed to deliver the remainder to Mrs. Allen as the sole legatee of the bequest; not because it was such net proceeds that was bequeathed, but because the proceeds of the sale of the crop would represent and would be the same as the crop itself, and because the residue of the proceeds, after the taxes and other charges had been taken out, would represent the net legacy in the crop which had been bequeathed to Mrs. Allen. It was in reference to this feature of the case that the Supreme Court held that Mrs. Allen was entitled to the net proceeds of the crop of 1894, instead of those legatees of the proceeds of the realty as contended for by Executor Smith.

Aside from this, it would do violence to the language of the bequest in the will itself, to conclude that it was such net proceeds only, arising after the sale of the crop, which was bequeathed in the will; and such construction of the meaning of the Supreme Court of Louisiana would make

the views of the Court, as then expressed, inconsistent and at variance with those views subsequently expressed by the Court on the appeal subsequently taken in reference to what was the thing bequeathed, as well as in reference to the time the bequest took effect.

OF THE PROCEEDINGS UPON WHICH THE SECOND APPEAL TO THE SUPREME COURT OF LOUISIANA WAS PREDICATED.

After the rendition of the opinion by the Supreme Court, in June, 1896, the case was remanded to the District Court for further proceedings in accordance with that opinion. The proceedings in which this controversy founds its origin were inaugurated in the joint petition and final account, filed by Collins, Executor, and the Executrix, on the 18th day on August, 1896 (Rec. p. 106), in the District Court in the Parish of Lafourche (for date of filing August 18, 1896, see Rec. p. 6). In that petition they allege (Rec. p. 1):

"Petitioners aver that after the final settlement of the matters set forth in their final account and the distribution in accordance therewith, there will remain nothing for them to do further, unless at some future date the Congress of the United States should make an appropriation of monies to pay the balance of the bounty money due under Act of Congress for sugar produced on the Rienzi Plantation during the year 1894. In that event they will have the amount so paid to distribute to its legal owner, but the adjudication of the ownership of the portion of the bounty already paid will settle the matter as regards the balance due and the payment of the same when received, to its legal owner, will be a mere ministerial duty and will require no further account from petitioners."

In the final account annexed they proposed, under their view of the previous opinion of the Supreme Court, to give

Mrs. Bettie Allen the net proceeds of the crop, counting from the date of the death of the testator (Rec. p. 5). They also proposed to turn over to Mrs. Allen the $11,569.35, bounty funds, which had then been paid over by the Government. In other words, they considered the bequest of the crop to Mrs. Allen to be a separate bequest in the will to her exclusively and separate from the bequests of the proceeds of the plantation which were bequeathed, one-half to her and the other moiety to the legal heirs named in that bequest. This construction by them involved not only the ownership of the bounty money but also the proper liquidation of the costs and expenses incurred in the production, manufacture and sale of the sugar from that crop. And both these issues depended upon the construction of this bequest in the will and the date that it took effect in favor of Mrs. Allen as a legatee of the crop. Smith, Executor, opposed both these propositions in his petition and final account filed August 29, 1896, in opposition. (Rec. pp. 7 to 21). In them he contended that to find the net proceeds of the crop there should be deducted from the gross proceeds not only those expenses which were incurred after September 19, 1894, the day of the testator's death, but also that those expenses which had been incurred by the testator prior to and up to the time of his death should be deducted; whereas, Executor Collins and the Executrix proposed to pay over to her the gross proceeds with only those expenses which had been incurred after the death of the testator deducted therefrom. (See Executor Smith's account "Caption, Crops of 1894 and 1895," Rec. p. 17). In his petition (Rec. p. 8) he then explained his position in reference to the ownership of this bounty fund which was then on hand, wherein he alleged:

"Petitioner particularly opposes to give any part of the bounty money to Mrs. Bettie Allen. This money formed no part of the crop of 1894, is an unwilled asset and must be distributed among the legal heirs who have not been cut off by the will in accordance with petitioner's final account filed herewith."

As to how he proposed to distribute this bounty fund, see his final account (Rec. pp. 16 and 17). In this contention Ogden Smith was joined and expressly endorsed by the legal heirs to the estate and who are defendants in error in this proceeding, viz: by Mrs. Nellie Houchens, Ogden Smith, T. A. Smith, Gaston Smith, Fred Douglas Smith (Rec. p. 23); by John B. Turner and W. A. Turner (Rec. p. 25), and by the estate of R. H. Allen (Rec. p. 27), to which we call special attention. In this it will be observed that the rights of the defendants in error to the bounty fund in controversy is based upon the theory that it is an "*unwilled asset*" of the estate, and "must be distributed among the legal heirs * * * in accordance with petitioner's final account filed herewith." It is well to note that they found their right to this fund upon the theory that it formed an asset of the estate of R. H. Allen, deceased, who had died on September 19, 1894, and that as such it became a part of the *unwilled residuum* falling to the legal heirs not cut off therefrom by the will. On the other hand, Mrs. Allen founds her claim to this bounty fund upon the theory that it was never an asset of the estate of the deceased at all; that the crop of sugar cane standing unmatured on the plantation in the condition it was the day he died, was the asset in his estate with all that appertained to it; that it was bequeathed to her by the will with all its susceptibilities; that under her title

and possession as legatee it was subsequently matured, harvested and manufactured into sugar; and that this was the condition upon which this bounty fund was subsequently appropriated by the Act of March 2, 1895.

In that controversy, between Executor Smith and the others, there was another question in dispute relating to the effect of this bequest to Mrs. Allen. In 1895 the plantation was operated under the gestion of the executors, and there was a deficit of $748.19, excess of expenses over the revenues, in the operation of that year. Executor Smith in his account charged this deficit to Mrs. Allen, individually, which he claimed she should support as legatee under the will. (Rec. p. 18). Hence, it will be seen that in these last accounts there arose between these parties, three matters of dispute, all growing out of the effect of this bequest of the crop of 1894 to Mrs. Allen, viz:

First. Whether from the gross proceeds of the crop there should be deducted the entire expenses incurred, including those that were incurred before as well as those occurring after the death of the testator; or, should only those expenses incurred for account of the crop after the death of the testator be deducted.

Second. Whether the deficit of $748.19 arising from the planting operations of 1895 should be charged to Mrs. Allen, as legatee of the crop, or should it be charged to the general estate of the unwilled assets falling to the legal heirs.

Third. Whether Mrs. Allen, as owner of the crop of 1894 from the date of the death of the testator, is the beneficiary of the bounty fund in controversy, and should that

sum be paid to her exclusively. All these matters involved the rights of Mrs. Allen as legatee of the bequest of the crop to her, and all of them alike depend for solution upon the ascertainment of the nature and character of her right or title to the crop under the bequest. Both the District Court, as well as the Supreme Court of Louisiana, maintained that Mrs. Allen was entitled to the proceeds of the crop of 1894, after deducting those expenses only which had been incurred after the death of the testator on September 19th, and that the deficit of the crop of 1895 must be borne individually by her as legatee under the will. In relation to the net proceeds of the crop of 1894 to be paid to her, the Supreme Court then said:

"In view of the fact that the price of property was ruling low at the time he made his will, he gave them a period of five years within which to make sale of his plantation; and, further providing for the contingency of delay in effecting a sale, he authorized them to either rent or work same so as to pay all taxes and charges. And in this connection the testator declared that any over that (should) go to Mrs. Bettie Allen's credit."

"To our minds the conclusion is clear that the will contemplated and dealt with the renting or cultivation of the plantation after the death of the testator, and during such a period of time as it might remain under the administration of the executors pending sale. That as a necessary consequence the taxes and other charges to which the testator referred were those to be incurred during their incumbency; and it is therefore obvious that it was the resulting balance, after their deduction, that the testator desired his surviving widow should have.

"He contemplated that those planting operations might continue for five years; and should that have been the case she would have been entitled to the resulting balance of each year's operations. But the date at which the expenses

were to begin was evidently that at which the administration of the executors commenced; and only those incurred during their administration should be deducted from the proceeds of the crops in order to ascertain the net balance thereof, including the expense of making the sale."

In relation to the deficit resulting from the crop of 1895, the Court says:

"The foregoing argument, in our opinion, disposes of the question of the deficit on account of the crop of 1895, as it was cultivated and manufactured under the superintendence of the executors; and it necessarily followed the destination of the same provision of the will as the proceeds of the crop of 1894.

"As the crops grown on the plantation pending the sale were by the mandate of the will to be turned over to Mrs. Allen as a particular legatee, after all expenses were paid, the legal heirs must be relieved of the burdens it has occasioned.

"It follows, necessarily, that this deficit is not a charge against the unwilled portion of testator's estate; and for the same reason it is not a charge against the general estate." (Rec. pp. 132 and 135).

Under the views expressed there by the Court, in relation to these two matters, it is obvious that the cultivation of the plantation after the testator's death was for the account of Mrs. Allen subject to the charges imposed, and that the tenure for her account began when that of the deceased terminated. We also see that those charges imposed by the bequest include only those expenses which every sugar planter on his own premises has to support. She stands under this bequest in precisely the same relation as every sugar planter on his own premises stands to the crops he produces. The expenses imposed on her under this bequest are no more than those which all other planters have to support; hence, the fact that these burdens or

expenses are imposed by the bequest no more militate against her ownership of the crops under her tenure, than such expenses would operate to defeat the ownership of planters operating on their own plantations. The effect of the bequest was to place Mrs. Allen after the death of the testator until after the sale could be made, in precisely the same position and relation in the operation of the plantation, which the testator himself had occupied prior and up to the time of his death. From that time under the will she took his place. Had he lived he would have been compelled himself to support those charges which he imposed on her under this bequest. The plantation was not itself disposed of by the will, neither did it fall into the unwilled estate. He directed that his executors should sell the plantation and that the price received in money, notes, etc., should be divided in the manner directed by him among the legatees. But, from the date of the testator's death until his executors should accomplish the sale as directed, the widow was to occupy the place and stead of the testator himself, in operating the plantation. The Supreme Court so regarded and treated her, in the opinion from which we have made the foregoing quotations. Especially are we confirmed in this view when the Supreme Court held her responsible for the deficit on the crop of 1895. No grounds would exist on which to subject her to that charge as the result of the planting operations of 1895, if, as here contended by the legal heirs, her rights as legatee under the bequest are postponed until after the sale of the crop by the executors, and then vested *only* in the net proceeds resulting from such sale. Under such a construction of the bequest her rights as legatee

upon the crop would be contingent, eventual and dependent on net proceeds over expenses resulting from the sale of the crop, but such construction could not create or give rise to any obligation on her part to pay any loss which might enure from a failure of the proceeds to pay expenses.

We sum up from that opinion of the Supreme Court on these points the following result: In the first place, the Court gives Mrs. Allen, under the bequest, the crop of 1894, from September 19, 1894, including the benefit of all that the testator had expended upon it up to that date, and subject only to those expenses which had been incurred after his death; in other words, the Court treats the crop as hers and as being for her account, from the opening of the succession. In the second place, the Court held her to support the net loss incurred from planting operations of the crop of 1895, which could only have been done on the theory that the planting operations were for her account and the crop hers, with whatever burdens or benefits might result from the operations. However, the Court in that opinion decided the bounty question against Mrs. Allen, but it rested its conclusion on an error of fact as to the identity of the crop upon which the bounty had been paid. The Court was under the impression that the crop upon which the bounty money had been paid, had been manufactured *prior* to August 28, 1894, and that the payment was made under the first clause of the Act of March 2, 1895, and was for a bounty *which had been fully earned by the decedent* during his lifetime under the original Bounty Act of October 1, 1890. On this subject the Court, in its opinion, said:

"And when, in March, 1895, the second bounty act was

passed which gave to 'those producers and manufacturers of sugar who had complied with the provisions of the first bounty law a bounty of two cents a pound on all sugars manufactured and produced by them previous to the 28th of August, 1894,' the crop of 1894 had been gathered and sold.

"On this statement it seems evident that the avails of the bounty received a destination specially indicated in the Act of Congress—that is to say, to those persons who had complied fully with the provisions of the former bounty law, and *he had produced and manufactured the sugar previous to the repeal* of that law, on the 28th of August, 1894." Rec. p. 136. (Our italics.)

It is here shown that the Court founded its conclusion upon this bounty question upon the error of fact that the bounty fund in controversy had been due and paid by the Government under the first clause of the bounty schedule in the Act of March 2, 1895, for sugars which had been manufactured and produced by the decedent under the original Act of October 1, 1890, and prior to August 28, 1894, which was a date prior to the death of decedent and prior to the date at which the bequest to Mrs. Allen took effect upon the crop left by decedent. This error of fact necessarily excluded the basis upon which Mrs. Allen founds her claim to this bounty fund; which, is that the bequest to her of the growing crop of unripe sugar cane on the Rienzi Plantation took effect September 19, 1894. That the sugar cane was subsequently matured under her title as legatee and was thereafter manufactured into sugar, between August 28, 1894, and June 30, 1895, for her account, within the terms of the second clause of the Act of March 2, 1895.

In her application for a rehearing upon that opinion, Mrs. Allen called the attention of the Court to the error there

made, and predicated her right to the rehearing mainly on that ground. She therein specifically set forth the facts and the grounds of her right to this bounty fund which the Court then had denied her, and these grounds are contained in this Record on pages 141, 142, 143. The rehearing was granted her on that application. (Rec. p. 144).

The Court, in the opinion afterwards rendered on the rehearing (contained in the Record at pages 145, 146 and 147), recognized her right to the crop from September 19, 1894, and admitted that it had been subsequently matured and harvested and manufactured into sugar for her account.

In that opinion the Court said:

"To the day of the testator's death, on September 19, 1894, the plantation had been his property; the crop had been planted and cultivated by him, and all expenses to that date were paid from his funds. The value of the crop to that date he had earned. * * * In determining who was the producer it was not possible to exclude from all consideration the labor applied under the direction of the owner and the amount expended by him.

"The legatee here claiming assisted after the date just stated in producing the crop, but she was not the exclusive producer, and she, therefore, is not entitled to the whole bounty of the Government granted to the producers who produced an entire thing, a crop."

"After having decided that to the date already mentioned the testator was the producer, we applied ourselves to ascertain by whom this producer was succeeded as a producer, whether it was Mrs. Bettie Allen, as legatee, or the legal heirs. * * *

"But there are other clauses of the will which, in our view, extend her right and show that she was the producer after the death of Mr. Allen. She paid all expenses of the crop; she was to receive the proceeds under the terms of the will; *indeed, she was the owner of the crop. She can well*

be considered, as we think, the producer." (Our italics). (Rec. p. 146).

The Court here corrected the error in the original opinion into which it had then fallen, and instead of concluding that the decedent, *prior to his death, had produced a crop and manufactured the sugar therefrom*, here recognized that the testator had died before the crop of sugar cane was matured, from which the sugar was manufactured upon which this bounty was paid, and that the crop was matured and manufactured under Mrs. Allen's title as legatee after the death of the testator. But, while correcting the error of fact in the original opinion, the Court fell into another error, which is one of law, as we contend. That error is in holding that the bounty, under the second clause of the Act of March 2, 1895, is to be distributed or pro-rated between the persons who furnish the labor and expense for the planting and cultivation of *sugar cane* and the person who manufactures such sugar cane *into sugar*. It is upon this error of law that Mrs. Bettie Allen, the plaintiff in error, founded her petition and assignment of errors for the writ in this case and which she now prosecutes in this Court. But, before passing from this subject we desire to call attention of this Court to the fact that the defendants in error under Mrs. Allen's writ also applied in the Supreme Court of Louisiana for a rehearing upon the original opinion in which they *themselves judicially admitted* Mrs. Allen's possession and tenure of the crop under the will, wherein they say:

"That there is error to their prejudice, as they conceive, in that part of the final decree rendered in above entitled cause on Monday, April 12th instant, which fixes and es-

tablishes executors' commissions at the sum of seven hundred and twenty-five 39-100 dollars ($725.39), and which charges said commissions *to the mass of the estate*.

"And petitioners represent that said executors' commissions *should be charged against the crops of 1894 and 1895, respectively, and not against the general estate, for the reason that the gestion of said executors was exclusively for and in the interest of widow Bettie Allen, particular legatee of said crops* under the clause of the will, which provides that the plantation be 'worked or rented so as to pay all taxes and other charges, any over that to go to Mrs. Bettie Allen's credit.'" (Rec. p. 139).

ARGUMENT.

We insist that Mrs. Allen, under this last opinion of the Supreme Court of Louisiana, rendered upon the rehearing, was recognized by that Court as legatee by particular title, under the will, of the crop of sugar cane on the Rienzi Plantation, in that condition in which it was, on the day of the death of the testator, September 19, 1894; that she was the owner of that crop from that date; that it was subsequently matured, harvested and manufactured into sugar for her account. In this connection see her petition for the writ of error in this case (Rec. pp. 155, 156 and 157), also assignment of errors annexed (Rec. pp. 158 and 159). On the other hand, it is contended by the defendants, as heirs, that the bounty fund in controversy, as an *unwilled asset of the estate*, falls into the *unwilled residuum*, and therefore the whole bounty should be paid to and distributed among the legal heirs. We will discuss these questions in their inverse order.

THE BOUNTY FUND NOT AN ASSET OF THE ESTATE.

We cannot assent to the proposition that the deceased

testator ever had any right to, or interest in, the sugar bounty appropriated by the Act of Congress of March 2, 1895, or that the bounty fund here in controversy ever fell into his estate or became an asset thereof. We cannot assent to the proposition that any right to, or interest in, the bounty fund in controversy was ever acquired *from the deceased* by any one in any way. Confessedly, he died on September 19, 1894, before the appropriation of this bounty was made by Act of Congress on March 2, 1895. He had been paid by the Government all the bounty he had ever earned or claimed up to the time of his death. All the bounty which he had ever earned existed under the original Bounty Act of October, 1, 1890, not one cent of which was due him or claimed by him at the date of his death, and no one now claims that the Government owed him any bounty upon any sugar which he had manufactured during his lifetime.

Indeed, the Act of 1890, under which bounty had been paid him, had been repealed on August 28, 1894, prior to his death on September 19, following. Therefore, when he died there was neither bounty due him for sugars which had been manufactured by him, nor was there any bounty promised him for any sugars which should thereafter be manufactured, and he owned no sugar upon which the bounty could be claimed from the Government by or for him.

All the theories and arguments advanced in this case about any rights to this bounty fund in controversy, as being derived from him, either by hereditary title, or testamentary disposition, are without any foundation. At the time of his death he had no such rights to transmit. Death

is a temporal end of man and terminates his capacity to acquire property. He died on September 19, without having produced or manufactured a single pound of sugar between August 28, 1894, and June 30, 1895, the period under the Act of March 2, 1895, within which the sugar must have been manufactured, to entitle any one to the bounty under that Act. Confessedly, he did not so manufacture any sugar at all within that period, and that is the end of all the claims set up under him to this bounty.

Some contention has been made that this bounty accrued to his estate, as an unwilled asset, by accretion. The doctrine of accretion is not here denied, but its application to this *unwilled estate* is without foundation, for the reason that accretion is an increase or accumulation to property, or added to the property itself, which enures to the owner of such property. In this case, confessedly, the property did not remain in the succession of the deceased, but passed by the will to the legatee, by particular title, from the date of the death of the testator, and this fact precludes the possibility of accretion to such property after the opening of the succession in favor of the unwilled estate. Whatever accretions arose or enured to this property after the death of the testator was under the title of the legatee and enures to her benefit, for accretions to property cannot enure to the benefit of any other person than the owner of such property.

Aside from this, the crop in its entirety having been disposed of under the will, it could not fall into the intestate, the unwilled *residuum* of the estate. Property conveyed by valid testamentary disposition cannot be said to be property of the unwilled *residuum* of the testator's estate. As to such property the legal succession or that

portion of it falling by law to the legal heir cannot be said to be open in favor of such legal heir.

"Legal succession is that which the law has established in favor of the nearest relative of the deceased." R. C. C. 877.

"If there is no testament or institution of heir, or if the institution is null or without effect, the succession is then open in favor of the legitimate heirs, by the mere operation of the law." R. C. C. 886.

The crop of 1894 having been disposed of in its entirety by the will, it is not seen how it could fall into the legal or unwilled estate. To treat it as an unwilled asset of the estate is to deny the existence of the legacy.

Under the will the entire crop was disposed of. Whatever was over or above "the taxes and other charges" fell to Mrs. Allen under the clause, "any over that to go to Mrs. Bettie Allen's credit." There was no remainder left under the disposition to her to fall into the legal succession in favor of the heirs-at-law.

"Every legacy under a particular title gives to the legatee, from the day of the testator's death, a right to the thing bequeathed, which right may be transmitted to his heirs or assigns." R. C. C. 1626.

Therefore the heirs-at-law were cut off by the bequest to Mrs. Allen from any right to or interest in the crop of sugar cane of 1894, when the testator died.

The legal succession and the heirs-at-law being excluded, the crop with whatever pertained to it at the death of the testator passed to the legatee, and whatever accession was made to the crop by way of a bounty on sugars subsequently manufactured from it, enured to her benefit and attached to her ownership.

MRS. ALLEN'S OWNERSHIP.

Mrs. Allen does not here claim or contend that she derived her ownership and right to the bounty fund in controversy from the deceased. It was the unmatured ripening crop of sugar cane on the Rienzi Plantation that passed to her under the will on September 19, 1894. She was the owner of the sugar cane when it was matured and harvested, and when it was manufactured into sugar, and this identifies her, under the Act of March 2, 1895, as the beneficiary of the bounty paid by the Government upon the sugar which was thus manufactured from the sugar cane belonging to her which had been produced and manufactured between August 28, 1894, and June 30, 1895. But it is contended by defendants in error that the testator, prior to his death, had applied, in conformity with the provisions of the original bounty law of October 1, 1890, for a license to manufacture sugar for the fiscal year ending June 30, 1895, and to this fact we assent. But we cannot, however, assent to the proposition that such application for a license by him would entitle him to claim any bounty from the government without his having "actually manufactured and produced sugar" within the period of that fiscal year. It is not the application for a license under the original law of 1890, or the subsequent Act of March 2, 1895, that the payment of the bounty is predicated. The payment of the bounty is conditioned exclusively upon the "manufacture and production of sugar," and as he produced none during the fiscal year for which he applied for the license, it is clear that he never performed the essential requisite to support a claim even under the Act of 1890, had it not been repealed on August 28, 1894. Not only is this true, but

Mrs. Allen is entitled to it on other grounds. Article 1626 of the Civil Code of Louisiana, declares:

"Every legacy under a particular title gives to the legatee, from the day of the testator's death, a right to the thing bequeathed, which right may be transmitted to his heirs or assigns." The Article 1636 further says: "The legacy bequeathed shall be delivered *with everything that pertains to it in the condition in which it was on the day of the donor's decease.*"

Under this it is clear that the application made for the license pertained to the crop bequeathed, was a condition the crop was in, and as such passed with it to the legatee.

It is also conceded that Mrs. Allen, the legatee, by particular title, is executrix with seizin by appointment under the will, and as such she is considered in possession of the thing bequeathed from the day of testator's demise. On this subject the Civil Code, Article 1628, says: "Neither is the testamentary executor who has the seizin of the effects of the succession and who is at the same time a legatee, bound to demand the delivery of his legacy."

The settled jurisprudence of the State on this subject is that, "as testamentary executrix, she was dispensed by law from the formality of demanding the delivery from the heirs, and the District Judge was authorized to consider her in possession as owner." Succession of Boone, 7th La. An. 128; Succession of Ames, 33 La. An. 1328.

These principles of elementary law in Louisiana are not contested in this cause. They were not contested before the Courts in Louisiana. Indeed, the last opinion by the Supreme Court of that State recognized the possession of Mrs. Allen of this crop of 1894 from the death of the testator. And in this connection the Court gave to her all

the benefits arising from the crop from that date, with only those expenses to be paid out of it which were incurred after the date on which she came into possession of it, and without any reference to any expenses which had been incurred in its cultivation prior and up to that date. In other words, in effect, the Court gave to her, from September 19, 1894, under the Civil Code, Article 1636, the crop bequeathed to her, with everything that then appertained to it and in the condition it was on that day. The error of that Court in this cause was that it denied her these same privileges in reference to the bounty subsequently appropriated under the Act of March 2, 1895. The contention that the testator, prior to his death and up to September 19, 1894, had paid for all the labor and supported all the expenses in the cultivation of this crop of sugar cane, therefore became entitled to a *pro rata* share of the bounty money in controversy, denies the principle of law recognized by the Court in devoting the entire proceeds of the crop to Mrs. Allen's legacy, with only those expenses incurred after the death of the testator deducted from it. But the idea of the Court seems to have been predicated upon the language of the Act of Congress of March 2, 1895, as controlling the *pro rata* distribution of the bounty fund between the legatee and the legal heirs under his succession, and this is the error in the State Court of which she complains.

We now submit that the second clause of the Act of March 2, 1895, will not bear that construction. The Court, as we think, fell into the error by misapprehension of the word "producers" used in the first line of the second clause of that Act, namely, "that there shall be paid to those producers who applied," etc. The word "producers" here

used in the Act evidently refers to the phrase in the first clause of that Act which is, that "there shall be paid by the Secretary of the Treasury to those producers and manufacturers of sugar in the United States." Certainly, the position of the Court that the cultivator of the crop of *sugar cane* is included in the intention of the Act as a participant in the bounty bestowed, cannot be maintained, neither can the laborer be recognized as a participant in that bounty, nor can the bounty be paid except upon "*sugars actually manufactured and produced* in the United States," upon which the bounty is predicated.

As applied to the question involved in this case, the Act will read:

"There shall be paid to those producers * * * a bounty of 8-10 of a cent per pound on the sugars actually manufactured and produced in the United States from sugar cane grown or produced within the United States during that part of the fiscal year ending June 10, 1895, comprised in the period commencing Aug. 28, 1894, and ending June 30, 1895, both days inclusive."

The word "producers," used in the first part of the Act, is used in the same sense that the word "produced" is used in the phrase, "sugars manufactured and produced in the United States," and therefore the word "producers" as used in the Act means the manufacturers or producers *of sugars* as contained in the first clause of the Act. Any other construction that could be put upon this word "producers" would give the planter the right, after he had cultivated the crop of sugar cane, to a portion of the bounty, although, as a matter of fact, he had never produced or manufactured a single pound of sugar from it, and although the sugar cane produced by him had never

been actually manufactured into sugar by any other person, which would give a portion of the bounty under the Act, without reference to manufacture, a construction not admissible upon the face of the Act. But, as we have seen, the crop was bequeathed to Mrs. Allen *with all that appertained to it and in that condition it was in on the day of the testator's death*. This included the application which had been made by the testator prior to his death, for a license to manufacture it into sugar, and this fact of a compliance with the law on his part for a license appertaining to the thing bequeathed, to-wit., the crop, and on the day of his death the condition of the crop was one upon which the sugar bounty had been repealed, but upon which the application for a license to manufacture and produce sugar had been made. And that is what passed to this legatee. And this is what passed from the succession of the deceased under his will. The bounty of the Act of 1895 was earned by Mrs. Allen after his death by the manufacture of the sugar cane into sugar. And this identifies her as the beneficiary of the bounty under the Act and constitutes her the exclusive owner of the bounty fund in controversy.

As to the Writ of Error in No. 176.

We have to suggest the want of jurisdiction of this Court to issue the writ to the State Court on the application of the plaintiffs in error in No. 176, who are the defendants in error in No. 168. These parties do not claim the bounty fund in controversy under the Act of Congress of March 2, 1895, but they claim it by virtue of their inheritance from the succession of the deceased as an unwilled asset of his estate. There is no Federal question

involved in such a case, and no grounds, in our view, upon which the writ upon their application can be maintained. Under the Section No. 709, Rev. Stat. United States, when a final judgment is decreed in any suit in the highest court of a State in which a decision of the suit could be had, where any title, right or privilege or immunity is claimed, or any treaty, statute of, or commission held, or authority exercised, under the United States, and the decision is against the title, right, privilege or immunity specially set up or claimed by either party under such constitution, treaty, statute, commission or authority, may be re-examined and reversed, or affirmed in the Supreme Court, upon a writ of error. But in this case these parties expressly claimed this fund as an inheritance under the estate of a decedent in Louisiana. In this view the writ of error in No. 176 should be denied, if for no other reason than for want of jurisdiction of the Court to alter or amend the judgment of the lower court under their application.

Respectfully submitted,

J. H. Pierson
Atty for Pltff in Error
168, Defts in No 176.

No. 168. and 176.

DEC 8 1898
JAMES H. McKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES

Brf. of Chiapella for D. E. in 1

No. 168.

MRS. BETTIE ALLEN AND W. F. COLLINS, EXECUTORS, *Plaintiffs in Error*,

Filed Dec 3, 1898.

OGDEN SMITH, EXECUTOR, ET ALS., *Defendants in Error*.

No. 176.

OGDEN SMITH, EXECUTOR, ET AL., *Plaintiffs in Error*,

versus

MRS. BETTIE ALLEN AND W. F. COLLINS, EXECUTORS, *Defendants in Error*.

CONSOLIDATED.

Brief for J. B. Turner and W. A. Turner, Defendants in Error, in No. 168, and Plaintiffs in Error in No. 176.

HENRY CHIAPELLA,

Of Counsel for J. B. and W. A. Turner. Opponents, Defendants in Error in Suit No. 168, and Plaintiffs in Error in Suit No. 176.

L. GRAHAM & SON, LTD., 217-219 BARONNE ST., NEW ORLEANS.

SUPREME COURT OF THE UNITED STATES

No. 168.

MRS. BETTIE ALLEN AND W. F. COLLINS, EXECUTORS, *Plaintiffs in Error*,

versus

OGDEN SMITH, EXECUTOR, ET ALS., *Defendants in Error*.

No. 176.

OGDEN SMITH, EXECUTOR, ET AL., *Plaintiffs in Error*,

versus

MRS. BETTIE ALLEN AND W. F. COLLINS, EXECUTORS, *Defendants in Error*.

CONSOLIDATED.

Brief for J. B. Turner and W. A. Turner, Defendants in Error, in No. 168, and Plaintiffs in Error in No. 176.

SYLLABUS.

I.

The jurisprudence of the United States is fixed on these three propositions, viz.:

1. An indemnification for unjust captures is not a donation, but a right.
2. Sums awarded to the administrators or syndics of the claimant become assets of the succession or insolvency, distributable as such in their hands.

3. Equitable claims against our own and foreign governments are expectancies coupled with an interest, and as such are property rights passing under assignments in bankruptcy.

Comegys vs. Vasse, 1 Peters, 217.
Sheppard vs. Taylor, 5 Peters, 675.
Frevall vs. Bache, 14 Peters, 95.
Judson vs. Corcoran, 17 Howard, 613.
Phelps vs. McDonald, 99 U. S. 303.
Williams vs. Heard, 140 U. S. 529.

The sugar bounty in the Calder case was considered in the same light. It was there held that the sugar bounty was not a pure gratuity, but compensation offered to stimulate production. A contract with the government is formed, and the claim for bounty is a vested right, subject to sale under execution and passing to the syndics under our insolvency laws.

Calder vs. Henderson, 4 U. S. C. C. of A. Rep. 584.

In the recent Bounty cases the Supreme Court of the United States held that the bounty claims were of a nature which Congress might rightfully decide to constitute a debt of the United States, and the government through Congress had a right to pay the debts of the United States.

U. S. vs. Realty Co., U. S. vs. Gay, 163 U. S. 427.

II.

The claim against the Government resulting from the Appropriation under the Act of March 2, 1895, was a *right* forming part of the general assets of the succession of the deceased, and as such transmissible to his heirs at law—whether it existed at time of death, or accrued since the opening of the succession.

Articles 871, 872, 873, 874 of Revised Civil Code of Louisiana.

Such claim is not a pure donation to the heirs of Allen directly, but a right of compensation for spoliation to Allen and his estate.

Distinction to be drawn between Emerson vs. Hall, and Comegys vs. Vasse and similar cases.

Comegys vs. Vasse, 1 Peters, 217.
Emerson vs. Hall, 13 Peters, 411.

III.

The bounty to sugar producers is not a part of the proceeds of the crop.

Delogny vs. Creditors, 48 Louisiana Annual, 488

There is no principle of law under which bounty money can be classed as an accessory to the crop. It is neither an immovable by destination, nor by the object to which it applied.

Articles 463, 465, 468, 471 of Revised Civil Code of Louisiana.

IV.

"A testamentary disposition under a particular title shall have its effect according to the rules established for particular legacies."

Article 1605 of Revised Civil Code of Louisiana.

"Every legacy not included in the definition given of universal legacies and legacies under a universal title, is a legacy under a particular title."

Article 1625 of the Revised Civil Code of Louisiana.

"Le legs particulier est celui par lequel le testateuer égue des objet déterminés de la succession. Je lègue à Paul telle maison, une somme de 2000 fr. On voit que le légataire particulier, recevant un objet déterminé, indépendant des dettes et charges, ne droit pas en ëtre tenu. *Il ne représente pas la personne du défunt*" (italics ours).

Rogron (Code Napoleon annoté), 248.

"Every legacy under a particular title gives to the legatee, from the day of testator's death, a right to the thing bequeathed, which right may be transmitted to his heirs or assigns * * * Nevertheless the particular legatee can take possession of the thing bequeathed, or claim the proceeds or interest thereof, only from the day the demand of delivery was formed." * * *

Article 1626 of Revised Civil Code of Louisiana.

"The delivery of legacies under a particular title must be demanded of the testamentary executor who has the seizin of the succession." * * *

Article 1630 of Revised Civil Code of Louisiana.

"The legacy bequeathed shall be delivered with every thing that appertains to it, in the condition in which it was on the day of the donor's decease."

Article 1636 of Revised Civil Code of Louisiana.

"When one who is executor and also universal legatee takes possession of the estate as executor, he will not be regarded as having possession in his capacity of legatee; nor can he without judicial authorization change the nature of his possession."

Bird vs. Jones, 5 Louisiana Annual, 643.

Succession of Frazier, 33 Louisiana Annual, 594; 35 Louisiana Annual, 381.

Succession of Townsend, 37 Louisiana Annual, 408; 38 Louisiana Annual, 861.

A fortiori, where the legatee is only one of the three executors. For such join seizin of the three executors excludes the idea of the single possession of the executor-legatee, which is provided for by Art. 1628 of Revised Civil Code of Louisiana.

VI.

Under the act of Congress of March 2, 1895, the ownership must be vested in the producer and manufacturer to entitle the claimant to the benefit of said act.

The net proceeds of the crop of 1894-95, decreed to Mrs. Allen, do not vest ownership of the crop itself, from which said proceeds are derived by sale.

The right of action of said legatee to the net proceeds of the crop is one of accounting, and gives no right to the "thing," which by its sale established the proceeds.

The ownership of a thing is vested in him who has the *immediate dominion* of it, and not in him who has a *mere beneficiary right* in it. (Italics ours.)

Article 489 of Revised Civil Code of Louisiana.

"La propriéte d'une chose est dite appartenir à celui qui en a le *domaine direct*, et non à celui qui n'n a que le *domaine utile*." (Italics ours.).

Article 481 Louisiana Civil Code of 1825, French text.

(Article 489 of Revised Civil Code of Louisiana.)

VII.

Where a "testator, speaking by and through his will, instructed his executors to sell his Rienzi plantation, and gave them a designated time in which to act, and directed that until the sale, the wife should receive the proceeds of the plantation, if worked, until sold. *Held*, that the wife was entitled to the net proceeds as long as the plantation remained in the hands of the executors, and the proceeds of the crop growing on the place at the time of his death, passed to his wife."

Succession of Allen, 48 Louisiana Annual, p. 1037 (syllabus).

These two cases consolidated by agreement of counsel come up on two separate writs of error to the Supreme Court of the State of Louisiana prosecuted by Mrs. Bettie Allen individually and as executrix, and by W. S. Collins, executor, on the one hand, and by Ogden Smith, individually and as executor, together with the Smith heirs, the Allen heirs and the Turner heirs, on the other hand.

The two records are printed together and are to be considered as one case.

[Agreement of counsel, Record, pp. 153–154.]

STATEMENT OF FACTS.

The question presented for solution is whether the bounty of 8-10 of a cent allowed and granted to *producers* of sugar, who had complied with all requisites under prior tariff laws, on all sugars actually manufactured and produced between August 28, 1894, and June 30, 1895, both days inclusive, as formulated in the second paragraph of the item "Bounty on Sugar," contained in the "appropriation bill for sundry civil expenses of the government, etc., of date March 2, 1895," should be considered as an accessory to a crop of sugar which under the last will and testament of a deceased sugar planter and producer had been bequeathed to a particular legatee, or whether said bounty should not be held to be a right, a chose in action, a mere claim, not connected in any way with the sugar crop, except as a means of calculation, and forming part of the general assets of the succession of such deceased sugar planter and producer, and as such transmissible to his heirs at law inheriting the unbequeathed and undisposed residuum of the estate.

The act of Congress under consideration in its second paragraph (which alone concerns us here) has no reference to *manufacturers* of sugar, but only to those *producers* of sugar who had complied with the requirements as to notice, application for license and bond provided for in the bounty schedule of the tariff act of 1890, popularly known as the "McKinley Bill."

In the case at bar, the producer of a sugar crop from cane grown and produced within the United States was the late Richard H. Allen, a wealthy sugar planter residing on the Rienzi plantation, in the parish of Lafourche, State of Louisiana, who died on September 19, 1894, after the repeal by Congress of the McKinley Bill, on August 28, 1894. He had filed application for license and bond prior to his death, and had obtained a license to

produce sugar from sugar cane grown within the United States for the year 1894, and had otherwise complied with all the requirements of the then existing tariff legislation relative to sugar bounties. At his death, the three executors under the will, W. F. Collins, Widow Bettie Allen and Ogden Smith, administering the succession jointly, took charge of the Rienzi plantation with the growing crop of sugar cane, and manufactured it into sugar, which they sold on the market of the city of New Orleans. The *net proceeds* of the crops of said Rienzi plantation—whether said crops be of sugar, rice or corn, it matters not—were turned over to Mrs. Widow Bettie Allen, by the executors, under the decree of the Supreme Court of Louisiana interpreting a clause of the will of Richard H. Allen, to the effect that all the revenues from the plantation, after payment of taxes and other charges, "*should go to her credit.*" There was another crop raised by the three executors during the year 1895, which yielded no revenues, but resulted in a deficit of $748.19.

The executors then ceased to work the plantation, and delivered it in January, 1896, to the particular legatees thereof, the Allen heirs, the Smith heirs, and the Widow Bettie Allen, in certain undivided proportions, and these proceeded to sell the same, and to partition the proceeds among themselves.

In the meantime, Congress having passed the above quoted bounty appropriation of 8-10 of a cent per pound on the sugar crop of 1894, the executors collected the same from the government of the United States—$11,569.35, or thereabout—and proceeded to make a distribution thereof among the distributees thereof under the law. But here the three executors could not agree as to the proper mode and method of distribution, nor as to the beneficiaries whom Congress had in view, when the sugar producer had died subsequent to the repeal of the "McKinley bill," and prior to the enactment of the

bounty appropriation bill of March 2, 1895. Two of the executors, W. F. Collins and Mrs. Widow Bettie Allen, adhered to the theory that the whole of said bounty appropriation enured to Widow Bettie Allen, either because she was the particular legatee of the sugar crop, or more properly of the net proceeds of the sugar crop, or because she was, as such particular legatee, the producer and manufacturer of the sugar from sugar cane grown or produced within the United States. The other joint executor, Ogden Smith, took an opposite view of the law which he considered was to indemnify Richard H. Allen, and after death his estate and heirs at law continuing his person, since it was Richard H. Allen who was the sole producer of sugar, having complied prior to his death with all legal requirements relative to notice, application, license and bond, and who was spoliated, when yet alive, on August 28, 1894, by the repeal of the tariff legislation on sugar bounties on the part of Congress.

This divergence between the three joint executors caused them to file two separate and distinct "Accounts and Tableaux of Distribution" in the Probate or District Court of Lafourche parish, State of Louisiana.

Tableau of Collins and Widow Allen, Executors, Record, pp. 2-6.

Tableau of Ogden Smith, Co-executor, Record, pp. 9-21.

More particularly pp. 16-17.

The heirs at law of the late Richard H. Allen inheriting the residuum of his estate were cited and notified of the filing of said two final accounts—which should be considered in the nature of oppositions to one another—and the said two sets of executors prayed for a decree of homologation and approval of their said final accounts respectively.

Petition of Collins and Widow Allen, Executors, Record, pp. 1, 2.

Petition of Ogden Smith, Co-executor, Record; pp. 7-8.

There were three sets of heirs, all nephews and nieces of the decedent, the Smiths, the Allens and the Turners, who appeared in the District Court of Lafourche parish, and took sides with Executor Ogden Smith, accepting his method and mode of distribution of the bounty money, and praying for homologation of his final account, while they strenuously opposed the other final account presented by Executors Collins and Widow Bettie Allen, on numerous grounds based on law; on the will of the deceased, as interpreted and construed by the Supreme Court of Louisiana, and on the facts of the case.

Oppositions of Smith heirs, Record, pp. 22-23.

Oppositions of Aucoin, administrator of T. H. Allen, Record, pp. 27-28.

Oppositions of Turner heirs, Record, pp. 23-26.

The oppositions of said heirs at law were tried together with the oppositions of the tableaux to one another, and the District Judge in a well-considered opinion and decree sustained said oppositions, in so far as the bounty money was concerned.

Opinion and decree of District Judge, Record, pp. 52, 57.

An appeal to the Supreme Court of the State of Louisiana was sued out by Executors Collins and Widow Bettie Allen, and, after trial in said Appellate Court, the decision of the lower Court was affirmed in favor of the heirs at law and opponents.

First decision of Supreme Court of Louisiana, Record, pp. 125, 138, and especially pp. 133, 136.

An application for a rehearing was filed by Executors Collins and Widow Bettie Allen, and was granted by the Court. On the second hearing, the Supreme Court of Louisiana amended its prior decree by reducing the former allowance made to the heirs, by one-half of the

bounty money, which they awarded to Widow Bettie Allen, legatee.

Second decision of Supreme Court of Louisiana, Record, pp. 145–147.

This compromise verdict suited neither party. Hence, Mrs. Bettie Allen, individually and as executrix, and W. F. Collins, executor, sued out a writ of error to the Supreme Court of the United States from that part of the decree which restricted Mrs. Allen to one-half of the bounty fund. And Ogden Smith, on the other hand, individually and as executor, and the heirs at law joining him, likewise prosecuted their writ of error from that part of the decree which called for a division of the bounty fund with Widow Bettie Allen, particular legatee of the net proceeds of the crops, equally by halves.

Petition of Widow Allen et al. for writ of error (Record, pp. 155, 157).

Petition of Ogden Smith et al. for writ of error (Record, pp. 173, 176).

Assignment of errors by Widow Allen et al. (Record, pp. 158, 159).

Assignment of errors by Ogden Smith et al. (Record, pp. 177, 180).

Both sides are therefore before the Court as appellants and appellees, respectively. The only parties to the record who appear in both cases solely as appellees, or defendants in error, are the two sets of disinherited nieces of the testator, the late R. H. Allen, viz.:

1. Mrs. Jennie Boyle, a niece, to whom a legacy of $500 had been made subject to the condition that she should "*have no interest in any other claim.*"

2. Mrs. Bettie De Berry and Mrs. Ellen B. Baker, nieces, belonging to another branch, to whom like legacies of $500 each had been made under similar restrictions.

Will of R. H. Allen (Record, pp. 62, 64—especially 63, 64).

The Supreme Court of the State of Louisiana when called upon to construe and interpret said will had excluded these two branches of heirs (commonly known as the three niêces) from the undisposed residuum of the estate.

Decree of Supreme Court of Louisiana, Record, pp. 112, 121, *and especially* p. 120.

The same rules of exclusion and disinherison were held to apply to the bounty fund in controversy, by both the District and Supreme Courts of the State of Louisiana. Neither Mrs. Boyle, nor Mrs. De Berry and Mrs. Baker have prosecuted writs of error in these cases, and as to them the matter is *res adjudicata*. They have, however, been cited and made defendants in error, and are here as merely nominal parties.

Citation to Mrs. Boyle, Record, p. 170 and pp. 184, 185.

Citation to Mrs. De Berry, Record, p. 171 and pp. 185, 186.

Citation to Mrs, Baker, Record, p. 172 and pp. 183, 184.

No community of property existed between R. H. Allen and wife. They were married separate in property. See Marriage Contract, Article First, Record, p. 107.

Such are the salient facts of the present controversy.

ASSIGNMENT OF ERRORS.

I. That the State Court erred in holding that Widow Bettie Allen, defendant in error, is entitled to and in awarding to her one-half of the bounty fund in controversy, which was paid by the Government of the United States to the executors of succession of Richard H. Allen under the Act of Congress approved March 2, 1895.

II. That the State Court erred in not holding that the estate of the late Richard H. Allen after his death, and his heirs at law upon whom devolved the whole succession and the residuum, after the bequeathing of a few particular legacies in money and property, were not the sole and true beneficiaries and owners of the whole bounty fund or appropriation paid under said act of Congress; and in not awarding to them the whole of said amount in controversy herein, as being entitled thereto solely and exclusively.

III. That the State Court erred in not rejecting as erroneous and unfounded in law, justice and equity, under the facts of the case, any and all claims of Widow Bettie Allen to the said bounty fund or appropriation, or to any part thereof.

IV. That the State Court erred in allowing and awarding to Widow Bettie Allen, as particular legatee of the net proceeds of the crops of the Rienzi plantation, any part of the bounty fund or appropriation in controversy, and in considering her in the light of either a producer or manufacturer of sugar for sugars actually produced and manufactured during the period extending from August 28, 1894, to June 30, 1895, and in treating her as beneficiary or owner of any part of said bounty fund or appropriation in controversy.

V. That the State Court erred in not holding that the late R. H. Allen, before his death, was the sole producer of sugar to be recompensed or compensated for the spoliations caused by the repeal of the law allowing the bounty on sugar, and after his death his general estate and his heirs at law, as his successors to the whole of said bounty fund or appropriation, as the true and legitimate producers and beneficiaries.

VI. That the State Court while correctly deciding and holding that the deceased, Richard H. Allen, by planting, cultivating and growing the crop of sugar cane up to the

date of his death, on September 19, 1894, had thereby fairly earned and become entitled to one-half of the bounty fund or appropriation allowed under said act of Congress and in controversy in the present cause, did improperly and illegally restrict his right, and that of his estate and of his heirs at law continuing his person, to one-half of said bounty fund or appropriation, instead of extending it to the whole, as was meant and intended by said act of Congress.

VII. That the State Court while correctly deciding and holding that the deceased, Richard H. Allen, was a "producer" within the meaning and intendment of said act of Congress, and after his death his heirs at law continuing his person, and awarding to him and them the one-half of said bounty, fund or appropriation, did improperly and illegally restrict his right and that of his estate and of his said heirs at law to the said one-half of said bounty, fund or appropriation, instead of extending it to the whole, as was meant and intended by said act of Congress.

VIII. That the State Court erred in not holding that the late Richard H. Allen, and after his death his estate and heirs at law continuing his person, were the sole "producers" which were meant and intended to be indemnified under said act of Congress.

IX. That the State Court erred in not holding that producers of sugar were first and foremost to be indemnified under said act of Congress. And in not holding that manufacturers of sugar who had not been producers were not contemplated to be indemnified under the provisions of the said act of Congress.

X. That the State Court erred in giving undue importance to the manufacturer who was not a producer of sugar. And that it was not sufficient to hold that the production of sugar was the first or primary consideration, and the manufacture of sugar the second or subsidiary

consideration, in the eye of Congress when passing the law. But that the decision should have been that the production of sugar was the paramount and sole consideration.

XI. That the State Court while correctly deciding that the testator, by reason of his having planted and cultivated the crop at his own expense and with his own funds, had at the time of his death on September 19, 1894, earned the value of the crop, did not go far enough, and erred in holding that he had earned a proportionate share of the bounty fund or appropriation. But that the decision should have been that he had thereby earned the whole of the bounty money or appropriation, amounting to the sum of eleven thousand five hundred and sixty-nine dollars and thirty-five cents or thereabout.

XII. That the State Court, while recognizing that "in determining who was the producer (under the act of Congress), it was not possible to exclude from all consideration the labor applied under the direction of the owner and the amount expended by him," erred in not giving their full weight to these important factors, and in restricting the right of sueh producer to a proportionate amount of the bounty fund or appropriation, instead of extending it to the whole bounty fund or appropriation.

XIII. That the State Court, after having decided the rights of Mrs. Bettie Allen to be those of a particular legatee of the "net proceeds" of the crop which was being cultivated by the executors under the express terms of the will, erred in viewing her in the light of either a producer or manufacturer of the crop, and in granting to her a *pro rata* of the bounty appropriation accordingly.

XIV. That the State Court erred, if it viewed Mrs. Bettie Allen, after the death of Mr. Richard H. Allen, on September 19, 1894, in the light of either a producer or manufacturer of sugar, since the crop of cane was being produced, cultivated and manufactured into sugar by the

executors of the succession of Richard H. Allen, and since she had no interest therein, and did not in any way contribute to or participate in said production, cultivation or manufacture of sugar. But that, on the contrary, her rights were limited to receiving from such executors in cash the net proceeds of sale of such sugar crop, after its production, cultivation and manufacture into sugar by the executors, if any such net proceeds existed, after all expenses, taxes and other charges paid, as expressly provided for by the terms of the will.

XV. That the State Court, while searching for the true beneficiary of the bounty fund, erred in endeavoring to determine the relative value of the interest of each producer, and in not holding that Mr. Richard H. Allen, while alive, and his estate after his death, and his heirs at law continuing his person, were the sole producers of the crop which was subsequently actually manufactured into sugar; and that Mrs. Widow Bettie Allen's rights, as particular legatee of the net proceeds of the crop, were restricted to the profits which would be realized from the sale of the sugar, after all debts paid, and contingent upon such a result, and did not exist otherwise. And that said Court erred in not holding that, under such a state of facts, Mrs. Bettie Allen could never be looked upon either as a producer or manufacturer of sugar, and in not excluding her from the bounty fund and appropriation, either for the whole or for a part, under the aforesaid act of Congress.

Respectfully submitted,

See Assignment of Errors by Ogden Smith et al., Record, pp. 177–180.

Points and Authorities for Turner Heirs, Opponents.

It must first be noticed that there are two separate classes of beneficiaries of sugar bounties in the Act of

Congress of March 2, 1895, and that there are two distinct paragraphs in said act bearing upon the subject matter.

The first paragraph of the act deals with *those producers and manufacturers of sugar* in the United States who had manufactured and produced sugars previous to August 28, 1894, upon which no bounty had previously been paid. To all *such producers and manufacturers of sugar*, a bounty of 2 cents per pound is to be paid. And for that purpose an appropriation of $238,289.08 is made by the act.

The second paragraph of the act contemplates remuneration only to *those producers* who, having complied with all the requirements as to notice, application for license and bond provided for in the bounty schedule of the anterior tariff act of 1890 (McKinley Bill), would have been entitled to receive a license, as provided for in said act. To all *such producers*, a bounty of 8-10 of a cent per pound is to be paid on all sugars actually manufactured and produced in the United States testing not less than 80 degrees by the polariscope, from beets, sorghum or sugar cane grown or produced within the United States during that part of the fiscal year ending June 30, 1895, comprised in the period commencing August 28, 1894, and ending June 30, 1895, both days inclusive.

And for that purpose an appropriation of five million dollars, or so much thereof as may be necessary, is made by the act.

(See Act of Congress of March 2, 1895, Appendix A.)

The first paragraph of the act does not concern us here. The bounty of 2 cents per pound therein provided enured to such sugar producers and manufacturers to whom a bounty was due under the prior McKinley bill on the crop of the year 1893. For at the date of repeal of the McKinley bill, the growing crop of sugar cane of the year

1894 was not yet ripe for manufacture into sugar. There were no manufacturers of sugar on August 28, 1894, except those of the grinding operations of the anterior season, a few of whom were yet unpaid. Hence, the small size of the appropriation—$238,289.08.

The second paragraph of the act is the one which governs the present case. The appropriation therein contained of $5,000,000 was in favor of *producers*—as they stood on August 28, 1894, and not in favor of *producers and manufacturers*. The allowance was made to such sugar planters who had complied with the provisions of the late McKinley bill, and was intended as a supplement or *post-mortem* re-enactment thereof.

The difference in the phraseology of the first paragraph, which deals with the *producers and manufacturers* of the preceding year, and the second paragraph, which relates altogether to the producers of the year 1894, makes it clear that the beneficiaries intended by Congress were the *producers* who were spoliated on August 28, 1894, by the repeal of the McKinley bill. Mr. Allen was one of them. He was alive at that date, and had complied with the requisites of the former bounty legislation. His subsequent death threw the claim into the estate; for the inchoate right against the government, which subsequently ripened into a perfect and complete right, either existed at the time of his death and was included in the succession, or it *accrued* since the opening of the succession, and would again form a part thereof.

The Revised Civil Code of Louisiana provides that—"The succession not only includes the rights and obligations of the deceased as they exist at the time of his death, but all that has *accrued* thereto since the opening of the succession, as also the new charges to which it becomes subject." Article 873 of Revised Civil Code of Louisiana.

None can claim the bounty money, except under and through Mr. Allen. He had obtained a license from the

government to produce sugar, and to him Congress was under a moral obligation to repair the spoliation caused by the change of legislation.

If the claim belonged to Allen, it went into his estate. As such, it fell into the undisposed residuum of the heirs at law, unless specially bequeathed, or unless an accessory to either the land itself or the crop.

There were no universal legatees under the will; and the Supreme Court of Louisiana, when called upon to interpret and construe said will, decreed that the residuum should go to the heirs at law, as in case of intestacy.

Say the Court: "There was no expression in the will following the particular description of the property, after the general description of all corporeal movables, to indicate that the wife was to have the *residuum* of his personal estate, nor is there any indication of any intent to make any other legatee the recipient of this *residuum*. We are forced to the conclusion, from a consideration of the entire instrument, that he intended the balance of his personal estate to go to his legal heirs—a disposition in doubtful meaning which the law favors."

Succession of Allen, 48 Louisiana Annual, 1046.

There being no residuary legatees, but only particular legatees to certain determinate objects, and the heirs at law having been recognized and decreed to be entitled to the *residuum* or unwilled portion of the estate. distributable between the Smiths, the Allens and the Turners, by thirds, equally—which judgment is *res judicata*—it follows that the bounty money enures to them, except it be an accessory to the land, to the crop, or to the net proceeds of the crop. Under what principle of law can a money appropriation by Congress be classed as an accessory to a crop? It is certainly not an immovable by destination, nor by the object to which it applies.

Articles 463, 465, 468, 471, of Revised Civil Code of Louisiana.

The claim against the government, such as it was in its embryonic state, at the time of Allen's death, clearly formed part of his succession. It is only because Allen grew a crop of sugar cane in 1894 and applied for a license under the McKinley bill that a recovery could possibly be had. This claim or right, by operation of law, was transmitted to his legal heirs. The Louisiana Code defines "Succession" as the transmission of the right and obligations of the deceased to the heirs.

Articles 871, 872 of Revised Civil Code of Louisiana.

Whether the bounty claim be considered as existing at the time of Allen's death, as a chose in action, transmissible to his legal heirs as belonging to him, or as a new right *accruing* since the opening of his succession, the result is the same. It falls into the estate and passes to the heirs.

Again, the Louisiana Code declares that succession signifies also that right by which the heir can take possession of the estate of the deceased, such as it may be.

Article 874 of Revised Civil Code of Louisiana.

Under the rule *le mort saisit le vif* the heirs at law inherited this claim—the three disinterested nieces not to be taken into consideration. This seems clear.

The Louisiana Code further provides that "A succession is acquired by the legal heir, who is called by law to the inheritance, immediately after the death of the deceased person whom he succeeds."

"This rule applies also to testamentary heirs, to instituted heirs and universal legatees, but not to particular legatees."

Article 940 of Revised Civil Code of Louisiana.

Widow Allen was only a particular legatee of the net proceeds of the crop.

The Code further provides that "the succession * * * becomes open by death."

Article 934 of Revised Civil Code of Louisiana.

There is no intermediate stage of inheritance. At the death of Mr. Allen, the claim against the government, which was not *in esse*, but only an expectancy coupled with an interest, devolved upon the heirs at law, as part of the unwilled or intestate succession of the deceased.

Such position is in accord with Federal jurisprudence.

The Supreme Court of the United States in a series of cases of claims against foreign governments for spoliations—from Comegys vs. Vasse in 1828, to the recent case of Phelps vs. McDonald—fixes conclusively the following propositions, viz.:

First—That an indemnification for unjust captures is not a donation, but a right.

Second—That the sums awarded to the administrators or syndics of the claimant become assets of his succession or insolvency distributable as such in their hands.

Comegys vs. Vasse, 1 Peters, p. 217.

See also Shepard vs. Taylor, 5 Peters, p. 675.

See also Brevall vs. Bache, 14 Peters, p. 95.

See also Judson vs. Corcoran, 17 Howard, p. 613.

See also Phelps vs. McDonald, 99 U. S., p. 303.

See also English authorities cited in Hall vs. Emerson, 11 Louisiana, p. 8, and particularly Randall vs. Cochran, 1 Vezey, 98.

Evans vs. Charles, Anstruther's Rep. 128.

The foregoing cases involved, most all of them, a question of compensation for spoliations committed by foreign governments.

Third—That equitable claims against our own and foreign governments * * * *were expectancies, coupled with an interest, and as such were property rights*, which passed under assignment in bankruptcy.

This was in accord with Comegys vs. Vasse. 1 Peters, 217; Williams vs. Heard, 140 U. S. Supreme Court, 529.

Can the rule be different if the spoliation be committed by our own government?

Was not the repeal of the McKinley bill, after the issuance of the license, and two-thirds of the year 1894 had gone by, a spoliation of the sugar planters?

Was not the act of March, 1895, passed in view of repairing that great injustice?

Was not the decision of the United States Supreme Court in the bounty cases based upon the same consideration?

Hence, the rule established in the foregoing cases should be applied here.

Hence, bounty moneys as succession assets should descend according to the legal order of successions.

No right, whether legal or equitable, perfect or imperfect, can be lost or annihilated.

"*Hæreditas nihil aliud est quam successio in universum jus quod defnnctus habuit*" (L. 24, Pandects).

In insolvency matters, which are analogous to succession proceedings, it has been held by the Supreme Court of Louisiana that a claim of an insolvent against the Mexican government, represented by a certificate of indebtedness on the Mexican government, passed by a cession to the syndic.

West vs. Creditors, 8 Rob. (Louisiana) 123, 128.

West vs. Creditors, 4 Rob. (Louisiana) 88.

In the recent case of Calder vs. Henderson, the U. S. Circuit Court for the Fifth Circuit of Louisiana held that sugar bounty was property. The case having been taken up to the U. S. Circuit Court of Appeals, an exhaustive decision affirming the decree appealed from was rendered. It was held:

1. That the sugar bounty was not a pure gratuity, or a mere recompense for personal services, but compensation

offered for the purpose of stimulating production. That a producer accepting the offer and complying with the act, becomes party to a *contract* with the government.

2. That a claim for bounty earned by raising sugar is a vested right subject to be sold on execution, and passing to the syndic under our insolvency laws.

Calder vs. Henderson, 4 U. S. Circuit Court of Appeals Rep., p. 584.

Finally, in the bounty cases, it was held that the claims were of a nature which Congress might rightfully decide to constitute a debt of the United States, and that the government of the United States, through Congress, had a right to pay the debts of the United States.

U. S. vs. Realty Co., 163 U. S. 427.

U. S. vs. Gay, 163 U. S. 427.

It can not be pretended that this case is governed by the rule laid down by the United States Supreme Court in Emerson vs. Hall, 13 Peters, 411.

There is no analogy between the two cases.

In the Emerson case the act of Congress was directly in favor of the heirs, Emerson being then dead. Inasmuch as the government was under no obligation, either in law or equity, to compensate him for his meritorious service, it was held that the claim did not go to the administrator as assets, was not liable for the payment of debts, and did not descend to the heirs. The gift was direct to them (13 Peters, 413).

The decision of the Supreme Court of Louisiana, in Hall vs. Emerson, was accordingly reversed (11 Louisiana 1).

Such is not however the case here. Upon what theory can it be claimed that the bounty money is a pure donation to Widow Allen? What title could she possibly have to a chose in action which, whether it were *in esse* at the time of Allen's death, or whether it *accrued* after death, was transmitted by mere operation of law to the heirs at

law not specifically disinherited? Mrs. Allen was neither an universal legatee, nor a residuary legatee, but a mere particular legatee of one-half of the plantation, after its sale, and also of the net proceeds of the crops during all the time the plantation would be in the hands and under the control of the executors prior to its sale. The claim is therefore based on the particular legacy of either the land or the crops, because the bounty would be accessory thereto. If accessory to the land, it enures to all the legatees of the Rienzi plantation (the Smiths and Allens for one-half), and not to Widow Bettie Allen solely. If accessory to the crops, or (using the language of the Supreme Court of Louisiana) to the net proceeds of the crops, this anomalous feature presents itself of an usufructuary's claims being paramount to those of the owners of the very soil which produced the sugar serving as the basis of calculation of such bounty.

Mrs. Allen repudiates the theory that the bounty money is an accessory to the land. But she prefers to have it considered as an accessory to the proceeds of the crop. Her pretensions can be formulated in this syllogism:

1. A legacy carries with it all its accessories. The thing bequeathed shall be delivered with everything that appertains to it, etc. The fruits produced by the thing belong to the owner, though produced by the work and labor of another, etc. Fruits of the earth, whether spontaneous or cultivated; civil fruits—that is, the revenues yielded by property from the operation of law or by agreement—and the young of animals belong to the owner by right of accession. "*On appele fruits civils, c'est-à-dire fruits par la fiction de la loi les revenus qui se percoivent à l'occasion d'une chose*" (Marcadé). Natural fruits are such as are the spontaneous product of the earth. Civil fruits are rents of real property, the interest of money and annuities. All other kinds of revenue or income derived

from property by the operation of law or private agreement are civil fruits (Major premise).

2. The bounty money is a civil fruit appertaining to the legacy. For this bounty was derived or came into existence by operation of law. And, if it did, under the very letter of the law it is a civil fruit, a civil fruit produced by the owner of the cane—the legatee, Mrs. Allen, to whom it was bequeathed, and which was made into sugar under the terms of the act of Congress (Minor premise).

3. Hence, would Widow Bettie Allen, as particular legatee of the crop—or rather of the net proceeds of the crop—be entitled to the whole of the bounty paid by the government to the executors of the estate of R. H. Allen.

The fallacy of the minor premise is glaring. There is no connection between the natural and civil fruits of the plantation with the bounty claim allowed by Congress to sugar planters and producers. Though based on the crop as a means of calculation, and conditioned on the production of the crop by the owner of the plantation, under certain rules, it was a pure gratuity from the government.

The Supreme Court of Louisiana has held that the bounty money was separate and distinct from the crop and the proceeds thereof. It was in a case where a mortgagor had stipulated in a mortgage act that he would pay the bounty money, when collected, to his creditor "just as if the bounty had been a portion of the proceeds of the crop." The bounty was subsequently collected by the syndic of all the creditors. *Held*—"*That the bounty was not a portion of the proceeds of the crop. It was no part of the crop.*"

Delogny vs. Creditors, 48 Louisiana Annual, 488.

The principle laid down by the Supreme Court of Louisiana in that case was reiterated by that Court in this very case. In the second opinion rendered on a rehearing the Court say: "We desire it to be well understood

that in our opinion the bounty money is no part of the crop or the proceeds of the crop. The question was, who was the owner and producer of the crop after the death of the testator? We adhere to the case of Delogny vs. Creditors. In that case, as in the case before us, the owner of the crop was the producer of the crop, but she, Mrs. Delogny, in pledging the crop had not pledged the bounty granted by the government."

Second opinion of the Supreme Court of Louisiana, Record, p. 146.

And in the first opinion rendered in this case the Supreme Court of Louisiana say: "Taking that case (Delogny case) as an illustration, it necessarily results from the argument that the bounty did not in the instant case constitute a part of the crop. As it did not constitute a part of the crop of Delogny, possession of which passed to his mortgagee as a pledge, so in the instant case the bounty did not constitute a portion of the surplus of the proceeds of the crops of 1894 and 1895, over and above their expenses, which passed by the will to Mrs. Allen. Or, in the language of the District Judge, it does not go to Mrs. Allen under the will, but to the heirs as an unwilled portion."

First opinion of the Supreme Court of Louisiana, Record, pp. 134, 135.

It is not correct to say that Mrs. Allen was ever a producer or manufacturer of sugar, or that she ever had possession of the plantation or of the crops thereof.

The fact is that the plantation and crops were placed by the testator in the hands of the three executors, for a term of five years, until sold for a good price, cultivation to go on in the meantime, and the surplus (if any), after the payment of taxes and other charges, to go to the credit of Widow Allen.

The testator had said in his will:

"As I fear property will be very low, I give my executors five years to work for a good price; in the meantime that they are waiting to sell, the place can be rented or worked so as to pay all taxes and other charges, any over that to go Mrs. Allen's credit." See Will of Allen, Record, p. 63.

There was an imperative duty imposed on the executors (if they did not lease) to work the place with the funds of the estate, for account of the estate, with a view of paying taxes and other charges of the estate—the surplus only, or net proceeds, accruing to Widow Allen. This was accordingly done.

How then can it be denied that the executors of the Succession of Allen, as such, were the actual producers and manufacturers of the sugar crop on the Rienzi plantation in the year 1894?

Did not the executors have seizin? Did they not collect from the United States government and administer upon this fund, and charge executors' commission thereon? And Mrs. Allen is one of them.

There were three executors. Their joint seizin excludes the idea of the single possession of the executor-legatee, which is provided for by Art. 1628 of Revised Civil Code of Louisana. The case, therefore, falls clearly within the rule laid down by Art. 1626 of Revised Civil Code of Louisiana.

It is not claimed that Widow Allen ever took possession of the Rienzi plantation and crops as particular legatee. Her possession was as one of three executors, and she could not without judicial authorization change the nature of her possession.

Bird vs. Jones, 5 La. An. 643.
Succession of Frazier, 33 La. An. 594.
Succession of Townsend, 37 La. An. 408.
Succession of Townsend, 38 La. An. 861.
Succession of Frazier, 35 La. An. 381.

Nor could Widow Allen possibly be in possession of the crop, as legatee thereof, unless she was in possession of the plantation itself, which had been bequeathed to two or three sets of legatees, herself included.

The clause of the will above quoted has been construed by the Supreme Court of Louisiana as vesting the "net proceeds" in Mrs. Allen.

Granting that the rights of Widow Allen to such net proceeds were fixed at the death of the testator, this was contingent upon there being "*net proceeds.*" And the fact is that there were no net proceeds for the year 1895, but a deficit of several hundred dollars.

The ownership, the dominion of the crop, never was in Widow Allen. She could not have taken possession thereof and put an end to the seizin of the executors. She only had a beneficiary interest in such crops at the end of the year, and after the executors had rendered their accounts, and her right against them was one *for the accounting of the net proceeds.*

The distinction between *the ownership of a thing and a mere beneficiary right therein* is clearly laid down by the Code.

"The ownership of a thing is vested in him who has the immediate dominion of it, and not in him who has a mere beneficiary right therein."

Art. 489, Revised Civil Code of Louisiana.

"La propriété d'une chose est dite appartenir à celui qui en a le domaine direct, et non à celui qui n'en a que le domaine utile."

Art. 481, Civil Code of Louisiana of 1825 (French text).

The test of ownership is the right to destroy—*jus abutendi*—which Mrs. Allen could not exercise to the prejudice of the trust imposed on her and the other two executors by the will to work the plantation, so as to pay taxes and other charges, putting aside the surplus only to her credit.

Congress when adopting the act of March 2, 1895, never intended that the terms "producer and manufacturer" should be disconnected from the ownership. They must be combined.

Mrs. Allen's right is that of a beneficiary, entirely independent of the ownership, which remained vested in the succession of Allen, represented by the three executors who had the seizin of the estate under the will.

All further discussion as to the nature and extent of the legacy to Widow Allen is closed by the final decree of the Supreme Court of Louisiana in the Allen will case to the effect that she was "entitled to the net proceeds as long as the plantation remained in the hands of the executors, and the proceeds of the crop growing on the place at the time of death passed to the wife" (syllabus).

Succession of Allen, 48 Louisiana Annual, 1037.

Res judicata pro veritate accipitur.

The consideration of the assignments of error and of the various grounds on which they are based is next in order.

FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR.

It was unfortunate that the case should have been reopened by the Supreme Court of Louisiana. First impressions are usually safe and correct. They are here clearly favorable to the heirs at law; and the Supreme Court of Louisiana, accordingly, in its first decision affirming the decree of the District Court of Lafourche parish, sustained the oppositions of the heirs, and rejected the pretensions of Widow Bettie Allen as unsound in law,

But, on the rehearing, the Supreme Court of Louisiana, by lending their ears to the enchanting songs of the sirens of sophistry, came very near wrecking the bark of jurisprudence in a whirlpool of judicial error. The decree correctly lays down the propositions, that "the end of

the bounty was to encourage the production of cane," and that "the act places the manufacture of sugar, in the matter of the bounty scheme, in a secondary position;" and, further, "that production was a first, and manufacture a secondary consideration."

Opinion of Supreme Court of Louisiana on Rehearing. Record, p. 145.

The Court, however, fell into a grave error when it extended the rights of Mrs. Allen, and came to look upon her as the producer of the crop after the death of R. H. Allen, in order to apportion the bounty money.

It has already been said that Mrs. Allen could not be a producer, because she was not the owner of the crop. She had a mere beneficiary right in the net proceeds of the crops of the estate, which was under the management of the three executors. The extent of her rights as such beneficiary had been fixed and determined irrevocably by the Supreme Court of Louisiana in the Allen will case (48 Louisiana Annual, 1047). Such rights resolved themselves into an action for the accounting of the revenues derived from the sale of the crop, and not for the crop itself, which was yet in the hands of the executors and unsold. How, then, can it be said that she was a producer? If she be the producer, what becomes of the trust imposed upon the executors to work the plantation, with a view of paying all the charges thereon, turning over to her only the surplus left, whatever it be? If the executors worked the plantation, as they had been enjoined by the will to do, they were the producers as the representatives of the estate of Allen. And if they were the producers, Mrs. Allen was not.

The plantation and growing crop were in possession of the executors and under their administration. How could a mere legatee of a particular object be in possession, until a delivery of the legacy had taken place? How could such

legatee have produced a crop of sugar, when she had not yet been put in possession thereof?

The evidence shows that the plantation was only turned over to the legatees thereof on January 29, 1896. And further, that the crop was administered by the executors, who manufactured the same into sugar.

See admissions, Record, pp. 30-31.

FOURTH AND FIFTH ASSIGNMENTS OF ERROR.

In its opinion on the rehearing the Supreme Court of Louisiana after premising that "production was a first and manufacture a secondary consideration," and after having attempted to present Mrs. Allen in the light of a producer after the death of Allen, proceeds thus: "As an estimate, we believe that on the well-employed plantation, such as we think this was, the cost of cultivation is about equal to the cost of manufacture, and that upon that basis, the heirs at law are entitled to one-half of the bounty, and the legatee to the other half."

Here, the Supreme Court seems to have apportioned the bounty—not between two different producers at two different dates, but between the producer on the one hand, and the manufacturer on the other hand. Hence, the Court appears to have abandoned the idea that Mrs. Allen was a producer, and now looks upon her as a manufacturer. Hence, manufacture is entitled to prorate with production. What a contradiction with the premises: "Production was a first, and manufacture a secondary consideration!"

SIXTH AND SEVENTH ASSIGNMENTS OF ERROR.

The Supreme Court of Louisiana, in its final decree on the rehearing, erred egregiously by adopting its method of apportionment between the producer (Mr. Allen) and the manufacturer (Widow Allen, legatee), since the manu-

facturer "*per se*" is not the contemplated beneficiary under the act of Congress in its second paragraph. The producer alone is legitimate heir to the munificence of the government. The Supreme Court of Louisiana had a clear insight of such intent (paragraph 2) when at the outset they proclaimed that production was king and manufacture a vassal.

Production, as is well kuown, is at an end on September 19. In the words of the Supreme Court: "The cane has been cultivated and laid by; the crop is left to the fertility of the soil, the fall of the sunbeams, and the soft architectural hands of the showers."

Granted. Why then apportion the bounty, when the producer alone had, at the date of September 19, earned his reward, and was resting on his laurels?

Eighth Assignment of Error.

The next assignment of error is to the effect "that the State Court erred in not holding that the late R. H. Allen, and after death, his estate and heirs at law continuing his person, were the sole '*producers*' who were meant and intended to be indemnified under said act of Congress."

It is admitted by all that at the repeal of the McKinley bill, on August 28, 1894, Mr. Allen being then alive, he alone was the producer. The cultivation of the cane crop had already terminated, the time for manufacture into sugar was fast approaching. His compliance with all legal requirements had given him a vested right, as it were—certainly an equitably claim to a bounty. If it can truly be said that the repeal of the McKinley bill was a spoliation, to him alone was Congress under obligation to repair the wrong.

Mr. Allen was the spoliated planter and producer whom Congress meant to remunerate. His right necessarily excluded that of the widow. There can not be two different beneficiaries. If Widow Allen was meant to be the

beneficiary, because she manufactured into sugar the crop of 1894, during the latter part of the period comprised between August 28, 1894, and June 30, 1895, as claimed, then what becomes of the clause which restricts the provisions of the act to such producers who had complied with all prior requirements relative to application for license, notice and bond and issuance of license? And if Mr. Allen was meant to be the beneficiary, because he had complied with all such requirements, how can his widow, or the purchaser of his plantation, or any one else who may have manufactured the cane into sugar, after his death, lay any possible claim to the bounty money, except under and through Mr. Allen, either by will or under the law?

And who can claim under and through Mr. Allen, except his heirs at law? The widow, as a mere legatee, could not compete with the heirs at law whom the Louisiana Supreme Court had declared to be entitled to the residuum. They were the successors of the deceased and and stepped into his shoes. The legal maxim, "*Le mort saisit le vif*," is the counterpart of the political axiom: "*Le roi est mort, vive le roi.*" In the legal domain, as well as in the governmental world, an interregnum is equally odious.

Ninth Assignment of Error.

Even if it could truthfully be said that Widow Allen was the manufacturer (to the exclusion of the estate of Allen)—which is not admitted—the fact yet remains that not having been a producer she was not the person whom Congress meant to indemnify by the second paragraph of the act.

Tenth Assignment of Error.

Undue importance was given by the State court to the manufacturer who was not a producer. The decision,

when construing the second paragraph of the act of March 2, 1895, should have been that the production of sugar was the paramount and sole consideration. And why? Because Congress wanted to restore the "*status quo*" of August 28, 1894. Nothing more. At the time, there were *producers* who suffered great pecuniary injury by the repeal of the McKinley bill. As to them, the repealing statute possessed all the obnoxious features of an "*ex post facto*" law. Not so in regard to *manufacturers* who, not having yet come into existence, could have no fault to find with prospective legislation.

ELEVENTH ASSIGNMENT OF ERROR.

The State court commited a grave error in apportioning the bounty between Mr. Allen's estate and Widow Bettie Allen, on the theory that each had earned a proportionate share of the bounty fund or appropriation—taking September 19, 1894, as the line of demarkation. In such a view of the case, Widow Allen should have had a *title of her own*, independent and not derivative from that of R. H. Allen. Such title she did not possess. She is not a direct participant in the gratuity of the Government, by reason of any just, legal or equitable title, right or claim existing in herself, independently of any other person or persons.

Whatever she claimed is only by virtue of the title, right and equitable claim of R. H. Allen, as the producer designated by congressional legislation. She can not claim under the will, because bounty money is not accessory to the legacy of a crop, and still less to the legacy of the net proceeds of a crop. She can not claim under the law, because the residuum of the estate goes to the legal heirs as an unwilled asset.

Twelfth Assignment of Error.

The Supreme Court of Louisiana, in the opinion on the rehearing, say: "In determining who was the producer, it was not possible to exclude from all consideration the labor applied under the direction of the owner and the amount expended by him."

Yet, their full weight is not given to these important factors. A proportionate share of the bounty is allowed to such owner and producer, when the full award had been earned free from contribution with the manufacturer under the express terms of the 2d paragraph of the Act of Congress.

Thirteenth Assignment of Error.

The State Court committed a serious error in viewing Mrs, Allen in the light of either a producer or manufacturer of the crop, and in granting to her, as such, a *pro rata* of the bounty appropriation. It had already, in its previous decree construing the terms of the will, restricted the rights of Mrs. Allen to the net proceeds of the crop. In the language of the decree:

"It is plain from the terms of the will that the testator "intended that the plantation should be sold, and the "proceeds distributed as directed by him.

"The legatees could not sue immediately after the "death of the testator for a partition in kind, as this "would have been contrary to the positive mandate of "the testator. The plantation was directed to be sold in "the most positive language. The legatees then were "only interested in the proceeds of the sale.

"No other reasonable interpretation can be given to "the language of the testator. If the plantation should "have been sold with the growing crop, it would have "passed with the place and increased the proceeds.

"The judgment appealed from is amended, so as to give

" Mrs. Bettie Allen the net proceeds of the crop on the " ' Rienzi Plantation' for the year 1894."

Succession of Allen, 48 La. An., pp. 1047, 1050.

It is evident that the interest of Mrs. Allen, as a legatee of her husband, is involved in the net proceeds of the crop, and not in the crop in kind. The very signification of the term *proceeds* excludes the pretension of Mrs. Allen that the crop grown on the Rienzi plantation was her own.

Proceeds, according to Bouvier's Law Dictionary, Vol. II, are: " Money or articles of value arising from the " sale of property; the sum, amount or value of the goods " sold or converted into money."

In Belmont vs. Dowvert, 35 N. Y. Super. Ct. 208, " proceeds " was held to mean the " amount of money " that in future would be obtained for the property upon " a disposition of it by sale."

The right of Mrs. Allen in the crop of sugar, both under the will of Allen and under the decree of this Court, does not carry with it the right or ownership of the " thing."

The distinction between the ownership of a thing, and a beneficiary right therein, under the laws of Louisiana, has already been noticed.

Art. 489, Revised Civil Code of Louisiana.

Art. 1626, Revised Civil Code of Louisiana.

The net proceeds of the crop decreed to Mrs. Allen did not vest ownership of the crop itself, from which said proceeds are derived by sale.

Her right of action for the net proceeds of the crop being one of accounting, gives no right to the " thing" which by its sale established the proceeds.

The domain of interpretation can no longer be searched for an explanation justifying a change in the decree. The domain has been thoroughly explored without any new discovery.

Fourteenth Assignment of Error.

The Supreme Court of Louisiana, in its decree on rehearing say: "But there are other clauses of the will which, in our view, extend her right, and show that she was the producer after the death of Mr. Allen. She paid all the expenses of the crop; she was to receive the proceeds under the terms of the will; indeed, she was the owner of the crop. She can well be considered, as we think, the producer."

This position is not tenable. The evidence in the record shows that it was not with her moneys that the crop was made, harvested and marketed.

The sugar crop of 1894 was made by Mr. Allen, and after his death by his estate—the executors having been thereunto expressly directed by the terms of the will. It was the money of the estate, every cent of it, which went to complete the crop of 1894, and not the funds of Widow Allen, who had none whatever, and who, on the contrary, borrowed and drew from the unwilled cash in the New Orleans banks belonging to the heirs at law under the prior decision of the Court, to the extent of $3725.22 (see testimony of Smith and Collens, and Knobloch, Record p, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43,.

It is admitted by all that after Mr. Allen's death the executors took $19,730.26 from the funds in bank constituting the residuum and accruing to the heirs at law, and used the same to complete and market the crop on Rienzi plantation in 1894. This amount, which is fully detailed in Statement A, annexed to Smith's account of February 5, 1895, was subject to a *restitutio ad integrum* and was reimbursed to the residuum and distributed to the heirs at law on June 12, 1896. (See admissions and receipts offered in evidence, Record, pp. 30, 31.)

It further appears that after February 5, 1895, the executors took $2766.13 additional from the funds in bank constituting the residuum, which are yet to be re-

imbursed to the heirs at law. (See Statement X, Record, p. 6.)

It is difficult to see how it can be pretended that Widow Allen contributed in any sense—either by her labor and industry, or with her moneys, to the producing and manufacturing of the crop of 1894.

She furnished no moneys to make the crop, but, on the contrary, drew for her personal wants a sum of $3725.22 against the funds belonging to the heirs at law, diminishing *pro tanto* what might have been necessary to save the crop (Record, p. 43).

How can Widow Allen claim that she paid for the manufacture of the sugar and that the executors merely acted as her representatives, unless she pretends to be entitled to the "*gross proceeds*" of the crop? But the Court allowed her only the "*net proceeds*." The expenses were not hers; and in case of a deficit, the loss would have fallen on the estate and not on her. This is the position assumed by her and her co-executor Collens, when dealing with the crop of 1895, which showed a deficit of $748.19, which they throw on the estate.

(See account of Collens and Widow Allen, Rec., pp. 2, 3, 4, 5, 6.)

Why should a different rule obtain in regard to the crop of 1894, which gave a large surplus?

Circumstances alter cases. When there was a deficit in 1895, the crop belonged to Allen's estate, which was charged with all expenses. But when the bounty on the crop of 1894 is dealt with—presto! a change of front occurs: The title is in Mrs. Allen, and it is by her that the crop is produced, matured, harvested and manufactured. And the executors are dumb spectators recreant to their trust!

Consistency, thou art a jewel!

Fifteenth Assignment of Error.

Our last assignment of error involves the following proposition: "That the State Court, while searching for the true beneficiary of the bounty fund erred in endeavoring to determine the relative value of the interest of each producer, and in not holding that Richard H. Allen, while alive, and his estate after his death, and his heirs at law continuing his person, were the sole producers of the crop which was subsequently actually manufactured into sugar; and that Widow Bettie Allen's rights, as particular legatee of the net proceeds of the crop, were restricted to the profits which would be realized from the sale of the sugar, after all debts paid, and contingent upon such a result, and did not exist otherwise. And that said Court erred in not holding that, under such a state of facts, Mrs. Bettie Allen could never be looked upon either as a producer or manufacturer of sugar, and in not excluding her from the bounty fund and appropriation, either for the whole or for a part, under the aforesaid act of Congress."

In its original decision the Court had held otherwise. To use their own words: "Whatever claim the testator had previously to the bounty had been completely annihilated by the repeal of the bounty law, and no right or claim thereto passed to Mrs. Allen as special legatee and beneficiary of the net proceeds of the crop of 1894. And when in March, 1895, the second bounty act was passed * * * the crop of 1894 had been gathered and sold. On this statement it seems evident that the avails of the bounty received a destination specially indicated in the act of Congress—that is to say, to those persons who had complied fully with the provisions of the former bounty law and had produced and manufactured the sugar previous to the repeal of that law on August 28, 1894. When the executors took charge of the estate the bounty law was

repealed, and all they did subsequently was to comply with the rules and regulations specified in the act and collect the money conformably thereto. When collected, it passed into their possession and custody as an unwilled asset of the deceased, and must pass to the account of the legal heirs."

Original opinion of Supreme Court of Louisiana, Record, p.136.

How broad the divergence between the first and second opinion! Why should the award originally to the heirs for the whole have been subsequently reduced by one-half in favor of Widow Allen? Evidently, in a spirit of compromise.

Compromise is always violative of principle.

In this instance, the compromise decree rendered on rehearing is in contravention with three legal principles established by the prior decree of the Court:

1. It confounds the crop proper with the net proceeds of the crop—a distinction which had been carefully observed in the anterior rulings of the Court.

2. It overlooks the joint tenure of the three executors and their seizin of the plantation, with the growing crops thereon, for a period of five years, under the terms of the will. The Court in its first opinion had said; "To our minds the conclusion is clear that the will contemplated and dealt with the rent or cultivation of the plantation *after* the death of the testator and during such a period of time as it might remain under the administration of the executors pending sale; that as a necessary consequence, the taxes and other charges to which the testator referred were those to be incurred during their incumbency, and it is therefore obvious that it was the *resulting balance*, after their deduction, that the testator desired his surviving widow should have. He contemplated that these planting operations might continue for five years, and

should that have been the case, she would have been entitled to the resulting balance of each year's operations."

First opinion of Supreme Court of Louisiana, Record, p. 133.

How then could Widow Allen be viewed in the light of a producer and manufacturer after the death of Allen? How could she be in possession of the crop for her own account, as the producer and manufacturer thereof, without violating her trust, as one of the three joint executors? The law of Louisiana prohibited such a change of front. (5 Louisiana Annual, 643; 33 Louisiana Annual, 594; 35 Louisiana Annual, 381; 37 Louisiana Annual, 408; 38 Louisiana Annual, 861.)

3. It enlarges the circle of the beneficiaries under the act of Congress, so as to include producers and manufacturers subsequent to the repeal of the McKinley bill, when the prior decree had restricted the scope to such producers "who had complied with the provisions of the former bounty law and had produced and manufactured the sugar *previous to the repeal of that law* on August 28, 1894." (First opinion of Supreme Court of Louisiana, Record, p. 136.)

In such a state of conflict, the palm (as we believe) should be awarded to the original opinion of the Court. It had the merit of being in accord with the well reasoned opinion of the District Court, as well as with the anterior decree of the Court in the Allen will case, and with the very phraseology and evident intent of the second paragraph of the act of Congress.

The Court, on the rehearing, having been drawn by the sophistry of argument into a labyrinth of perplexities failed to find in its adherence to the original opinion a guiding thread of Ariadne!

For all of which reasons, we respectfully pray that the final decree of the Supreme Court of Louisiana be an-

nulled, avoided and reversed, and that the former decree of said Court affirming the decree of the District Court for the parish of Lafourche awarding the whole bounty appropriation to the heirs at law not disinherited by the will, the Smith heirs, the Allen heirs, and the Turner heirs, equally by thirds, in accordance with the final account and tableau of distribution of Ogden Smith, co-executor, be reinstated and adopted as the final decree of this Honorable Court.

Respectfully submitted,

HENRY CHIAPELLA,

Of Counsel for J. B. and W. A. Turner. Opponents, Defendants in Error in Suit No. 168, and Plaintiffs in Error in Suit No. 176.

APPENDIX A.

Extracts from Act of Congress of March 2, 1895.

Bounty on Sugar.—That there shall be paid by the Secretary of the Treasury *to those producers and manufacturers of sugar* in the United States * * * a bounty of two cents a pound on all sugars * * * manufactured and produced by them previous to August 28, 1894, and upon which no bounty has previously been paid; and for this purpose, the sum of $238,289.08 is hereby appropriated, or so much thereof as may be necessary.

That there shall be paid to those *producers* who complied with the provisions of the bounty law, as contained in schedule E of the Tariff Act of October 1, 1890, by filing the notice, application for license and bond therein required, prior to July 1, 1894, and who would have been entitled to receive a license, as provided for in said act, a bounty of eight-tenths of a cent per pound on the sugars actually manufactured and produced in the United States testing not less than 80 degrees by the polariscope, from beets, sorghum or sugar cane grown or produced within the United States during that part of the fiscal year ending June 30, 1895, comprised in the period commencing August 28, 1894, and ending June 30, 1895, both days inclusive; and for this purpose, the sum of *five million dollars*, or so much thereof as may be necessary, is hereby appropriated; *provided*, that no bounty shall be paid to any person engaged in refining sugars which have been imported in the United States, or produced in the United States, upon which the bounty herein provided for has already been paid or applied for.

APPENDIX B.

Extracts from McKinley Bill [Tariff Act of 1890.]

The producer of said sugar to be entitled to said bounty shall have first filed prior to July 1 of each year with the Commissioner of Internal Revenue a notice of the place of production, with a general description of the machinery and methods to be employed by him, with an estimate of the amount of sugar proposed to be produced in the current or next ensuing year, including the number of maple trees to be tapped, and an application for a license to so produce, to be accompanied by a bond in

a penalty, and with sureties to be approved by the Commissioner of Internal Revenue, conditioned that he will faithfully observe all rules and regulations, that shall be prescribed for such manufacture and production of sugar.

The Commissioner of Internal Revenue, upon receiving the application and bond hereinabove provided for, shall issue to the applicant a license to produce sugar from sorghum, beets or sugar cane grown within the United States, or from maple sap produced within the United States, at the place and with the machinery and by the methods described in the application; but said license shall not extend beyond one year from the date thereof.

APPENDIX C.

EXTRACTS FROM FINAL ACCOUNT OF OGDEN SMITH, CO-EXECUTOR.

III.

THE BOUNTY MONEY.

Received from the United States government for bounty on sugar crop made on the "Rienzi" plantation in 1894 by check of the United States Treasurer on the Assistant Treasurer in New Orleans and deposited in the Louisiana National Bank in New Orleans, dated August 3, 1896, for the sum of eleven thousand five hundred and sixty-nine $\frac{35}{100}$ dollars, $11,569.\frac{35}{100}$.

This fund is chargeable with the following amounts paid by the executors:

October 8, 1894. L. J. Souer, bounty bureau	$15 00
November 16, 1894, L. J. Souer, bounty bureau	29 45
December 6, 1894, L. J. Souer, bounty bureau	27 90
December 8, 1894, L. J. Souer, bounty bureau	27 55
January 12, 1895, L. J. Souer, bounty bureau	69 30
January 26, 1895, Charles Janvier, manager bounty bureau	43 75
February 12, 1895, L. J. Souer, bounty bureau	90 00
April 24, 1895, L. J. Souer, bounty bureau	6 65
Lafourche Comet, printing	1 25
T. A. Smith, two trips to New Orleans	12 00
Expenses on sugar samples	3 85
Chas. J. Baker, notarial fees	10 00
	$336 70
W. F. Collins, co-executor, his commission, one-third of 2½ per cent. on $11,569.35	96 41
	$433 11
Net balance for distribution	11,136 24
	$11,569 35
Net balance for distribution as aforesaid	$11,136 24
Net amount bounty money for distribution	11,136 24

The bounty money, being an unwilled asset, must be distributed among the legal heirs who have not been cut off by the will, viz.:

1. To the estate of Thos. H. Allen, Sr., a deceased brother of testator, represented by J. Louis Aucoin, of the parish of Lafourche, administrator, one-third of $11,136.24	$3,712 08—	$3,712 08
2. To the two children of Mrs. Myra Turner, a deceased sister of testator, to each one-half of one-third, as follows:		
John B. Turner	1,856 04	
Wm. A. Turner	1,856 04	
		$3,712 08
3. To the five children of Mrs. Cyuthia Smith, a deceased sister of testator, one-fifth of one-third, as follows:		
Ogden Smith	$742 41⅘	
T. A Smith	742 41⅘	
Gaston Smith	742 41⅘	
Fred. W. Smith	742 41⅘	
Mrs. Nellie Houchens	742 41⅘	
		$3,712 08
		$11,136 24

APPENDIX D.

Extracts from Opinion of District Judge.

"I am clearly of the opinion that the bounty money forms no part of the crop proper, or the proceeds thereof. Though based on the crop, as a means of calculation, and conditioned on the production of the crop by the owner of the plantation, under certain rules, it was a pure gratuity from the government * * * It does not, therefore, go to Mrs. Allen under the will, but to the heirs as an unwilled portion.

* * * * * * * * *

"The bounty was given after the death of the deceased, but conditioned on his prior fulfilment of certain prerequisites prescribed by the McKinley bill; but the license was obtained and the equitable claim, in payment of which the allowance of the government was made, had been created prior to the death of the testator. The gift was to the testator or his estate, and not to his heirs, and consequently formed part of his estate." Record, pp. 55, 56.

APPENDIX E.

Extracts from First Decree of Supreme Court of Louisiana.

"The claim for bounty had not been collected when the succession was last before us. It was a gratuity from the government, notwithstanding it was based upon an estimate of the crop, as a means of calculation, and predicated upon the production of a crop by the owner thereof, under rules and regulations which were established by the Treasury Department.

"The allowance of the bounty was, by the government, conditioned on the fulfilment by the deceased of certain prerequisites, though payment of it was not made until after his death and subsequent to the filing of the executor's provisional accounts. The equitable claim of the deceased to the bounty had been created during his lifetime, and the license obtained, and all the conditions precedent had been complied with; though no mention of it was made in the will.

"It seems quite clear, to our minds, that the bounty money which was collected from the government by the executors formed no part of the crops of 1894 and 1895, nor of their proceeds. It was not *in esse* at the time those crops were grown and gathered.

"The executors did nothing but make the necessary proofs preparatory to its collection and receive payment of the money. It must consequently be classed an unwilled asset of the deceased, and not as part of the net proceeds of the crop of 1894, passing under the will to Mrs. Bettie Allen. * * * * * * *

"When the executors took charge of the estate the bounty law was repealed; and all they did subsequently was to comply with the rules and regulations specified in the latter act and collect the money conformably thereto.

"When collected, it passed into their possession and custody, as an unwilled asset of the deceased, and must pass to the account of the legal heirs; this, of course, results in charging to the general estate all the expenses that were incident to the collection of the bounty claim in 1895, as well as those which were engendered in 1894 preparatory to the collection, prior to the passage of the repealing statute. * * *

"From the foregoing provisions, it is clear that all the unwilled assets of the deceased, including the bounty money, fell into the succession, or general estate, whether same were *in esse* at the time of the ancestor's death, or arose into existence subsequently, and constituted the *residuum*, from participation in which the three disinterested legal heirs are precluded."

Record, pp. 133, 134, 136, 137.

APPENDIX F.

Extracts from Second Decree of Supreme Court of Louisiana, on Rehearing.

* * * The end of the bounty was to encourage the *production* of cane.

It devolved upon us to determine by whom the cane was produced.

In our judgment, after carefully reading the act, it is evident that the producer was to be the first to receive the benefit of the bounty.

It devolved upon him, in order to recover the bounty, to comply with certain formalities.

The act (although it includes the manufacture of cane into sugar as one of the essentials) places the manufacture of the sugar, in matter of the bounty scheme, in a secondary position.

In other words, in our view, production was a first, and manufacture a secondary consideration.

Each, however, was essential, in order to enable the producer to recover the bounty.

* * * * * * * * *

* * * After having decided that to the date already mentioned the testator was the producer, we applied ourselves to ascertain by whom this producer was succeeded as a producer, whether it was Mrs. Bettie Allen, as legatee, or the legal heirs. * * *

* * * We desire it to be well understood that, in our opinion, the bounty money is no part of the crop, or the proceeds of the crop. The question was, who was the owner and producer of the crop after the death of the testator? We adhere to the case of Delogny vs. Her Creditors, 48 Louisiana Annual, 488. * * *

* * * It is well known everywhere—in Louisiana at any rate—that the labor and expense of cultivating a cane crop are about at an end on September 19. The cane has been cultivated and laid by; the crop is left to the fertility of the soil, the fall of the sunbeams and to the soft architectural hands of the showers. As an estimate, we believe that on the well employed plantation, such as we think this was, the cost of cultivation is about equal to the cost of manufacture, and that upon that basis the heirs at law are entitled to one-half of the bounty, and the legatee to the other half. We have adopted this basis, because we think it is fair and just to all the interested parties, and also because it concerns the State and heirs and legatees that there shall be an end to lawsuits. * * *

See Record, pp. 145, 146, 147.

APPENDIX G.

Extracts from Will of R. H. Allen.

I give to my dear wife, Bettie Allen, all my corporal movables, such as furniture, bedding, linen, silverplate, chinaware, etc., all my stock of cattle, all my horses and carriages * * *

In addition to the above gifts, I give to my dear wife, Bettie Allen, $4000 worth of city of New Orleans bonds—4 per cent. interest-bearing bonds with coupons. I give her also £2350 in the hands of Baring Bro. & Co., Limited, more or less. * * *

I give to my wife, Bettie Allen, ½ of my Rienzi plantation and ½ of all tools, mules, etc. The names of my executors, etc., will be named hereafter. My executors shall have 1 to 5 years to sell and close up the estate, as I fear property will be very low and dull. They can sell part cash, part on time, 8 per cent. interest, with vendor's lien. I will that my wife do have ½ of everything belonging to Rienzi, except the claim due me by the U. States. That and other property I will speak of further on. * * *

* * * I appoint as my executors Ogden Smith and W. F. Collins, residing on Rienzi plantation. I also appoint Mrs. Bettie Allen executrix. I give them full power to sell Rienzi plantation, whenever they find a good offer. All the property there belonging, when it is sold, ½ of all the proceeds, cash, notes, etc.. is to belong to my wife, Bettie Allen.

The other ½ will be spoken of hereafter. As I fear property will be very low, I give my executors 5 years to work for a good price. In the meantime that they are waiting to sell, the place can be rented or worked so as to pay all taxes and other charges, any over that to go to Mrs. Bettie Allen's credit. * * *

* * * My three nieces, Mrs. Jennie Boyle, Mrs. Bettie De Berry, Mrs. Ellen B. Baker, have received each $500. I will that they receive $500 more in cash, and have no interest in any other claim.

(See will of Allen, Record, pp. 62, 63, 64.)

APPENDIX H.

Extracts from Decree of Supreme Court of Louisiana in the Allen Will Case.

"There was no expression in the will following the particular description of the property, after the general description of 'all corporeal' movables, to indicate that the wife was to have the residuum of

his personal estate; nor is there any indication of any intent to make any other legatee the recipient of this residuum. We are forced to the conclusion, from a consideration of the entire instrument, that he intended the balance of his personal estate to go to his legal heirs, a disposition, in doubtful meaning, which the law favors."

Succession of Allen, 48 Louisiana Annual, 1046.

"It is plain from the terms of the will that the testator intended that the plantation should be sold and the proceeds distributed as directed by him. Speaking from the time of his death, for the future sale of the property, he said to his executors that they should sell the Rienzi plantation and distribute the proceeds; and until they did sell it, the proceeds should go to the wife. The legatees could not sue immediately after the death of the testator for a partition in kind, as this would have been contrary to the positive mandate of the testator. The plantation was directed to be sold in the most positive language. The legatees then were only interested in the proceeds of the sale. The net proceeds belong to the wife, from the time of the death of the testator until the sale of the place. No other reasonable interpretation can be given to the language of the testator. If the plantation should have been sold with the growing crop, it would have passed with the place and increased the proceeds."

Ibid. 1047.

"The judgment appealed from is amended so as to give Mrs. Bettie Allen the net proceeds of the crop on the Rienzi plantation for the year 1894." * * *

Ibid. 1050.

Record, pp. 118, 121.

APPENDIX I.

EXTRACTS FROM MARRIAGE CONTRACT OF R. H. ALLEN BEFORE CENAS, NOTARY PUBLIC, JUNE 23, 1858.

"ARTICLE FIRST.

"It is hereby determined that the said intended husband and wife shall be separate in property, and that all property of whatsoever description now belonging to or which may hereafter be acquired by either party shall be, and continue under the separate and exclusive administration of said party respectively, without any exception or reservation whatsoever.

"And to this end and purpose, the said parties respectively renounce all laws and statutes of this State, establishing a community of acquets and gains between husband and wife."

See Marriage Contract, Record, p. 107.

APPENDIX J.

Admissions of Counsel.

It is admitted by all parties that due publication of the two final accounts have been made and published.

It is agreed that the two accounts shall be considered as petitions and oppositions one to the other.

It is admitted that the bounty of 1894 was applied for by R. H. Allen before his death, and that he obtained a license under the law of 1890.

It is admitted that the McKinley or bounty bill was repealed on or about the 28th of August, 1894, after the application for bounty had been made. The act authorizing the payment of the $\frac{5}{10}$ of 1 per cent was passed on the 2d of March, 1895, on the crop of 1894.

It is admitted that R H. Allen died on the 19th of September, 1894, and, thereafter, the crop was administered by his executors, who manufactured the same into sugar.

It is admitted that the gross proceeds of the crop of 1894, outside of the bounty, was the sum of $56,072.28.

It is admitted that the amount of the bounty paid by the United States on the crop of 1894 was the sum of $11,569.35.

It is admitted that the gross proceeds of the crop of 1895 is $30,974.05.

It is admitted that the cost of making, harvesting and selling the same was $31,722.24, and there was the deficit on that crop of $748.19—on the crop of 1895.

It is admitted that the plantation has been turned over to the legatees under the will on the 29th of January, 1896.

It is admitted that the government claim against the government of the United States has been turned over to the legatees.

It is admitted that the household furniture, cattle, etc., *was* turned over to Mrs. Allen under the will.

* * * * * * * * *

(See admissions of counsel, Record, pp. 30-31.

APPENDIX K.

Agreement of Counsel as to Transcript of Appeal.

It is hereby stipulated and agreed between the undersigned counsel representing all the parties in interest to the several writs of error herein obtained to the Supreme Court of the United States from the final judgment hereinbefore rendered by the Supreme Court of the State of Louisiana, as follows, to-wit:

1. The writs of error may be prosecuted jointly, and onl
script prepared and filed in the Supreme Court of the Unit
2. The transcript already prepared by the clerk of the Su
of Louisiana, to which this stipulation is attached, is agreed
plete transcript, with the understanding that, subject to the
Supreme Court of the United States in such cases made a
any party to this stipulation may at any time supplement t
script by filing such addttional part or parts of the original
may deem necessary.

All the costs incidental to the prosecution of the writs of
Supreme Court of the United States shall be paid out of t
"bounty fund" now in the hands of the executors of th
before any distribution thereof shall be made (Record, pp.

New Orleans, La. Dec

Henry C

attorney for Ja

Defendants in error

and plaintiffs in erro

SUPREME COURT OF THE UNITED STATES.

No. 168.

MRS. BETTIE ALLEN ET AL.,
Plaintiffs in Error,

versus

OGDEN SMITH ET ALS.,
Defendants in Error.

No. 176.

OGDEN SMITH ET AL.,
Plaintiffs in Error,

versus

MRS. BETTIE ALLEN ET ALS.,
Defendants in Error.

BRIEF FOR J. L. AUCOIN, ADMINISTRATOR OF THE SUCCESSION OF T. H. ALLEN, PLAINTIFF IN ERROR IN NO. 176 AND DEFENDANT IN ERROR IN NO. 168.

STATEMENT OF THE CASE.

Richard H. Allen died in the parish of Lafourche on the 19th of September, 1894. At his death, and for many years prior thereto, he was the owner of a valuable sugar

plantation, upon which he was engaged in the cultivation of cane and the manufacture of sugar. At the time of his death there was standing in his fields a large crop of cane ready for harvesting. In anticipation of this crop and of the manufacture of sugar therefrom Mr. Allen had complied with all the provisions of the bounty schedule of the act of Congress, known as the McKinley bill, and would have been entitled to collect the bounty. But in August, 1894, about one month prior to his death, the bounty schedule of the McKinley bill was repealed, There was, therefore, no bounty provision in force at the time of his death.

Mr. Allen left a will, from which we will quote the following pertinent provisions:

"I give to my wife, Bettie Allen, one-half of my Rienzi plantation and one-half of all tools, mules, etc. The names of my executors, etc., will be named hereafter. My executors shall have from one to five years to sell and close up the estate, as I fear property will be very low and dull. They can sell part cash, part on time, 8 per cent. interest with vendor's lien. I will that my wife do have one-half of everything belonging to Rienzi, except the claim due me by the United States; that and other property I will speak of further on. I appoint as my executors, Ogden Smith and W. F. Collins, residing on Rienzi plantation. I also appoint Mrs. Bettie Allen, executrix. I give them full power to sell Rienzi plantation whenever they find a good offer for all the property there belonging. When it is sold half of all the proceeds, cash, notes, etc., is to belong to my dear wife, Bettie Allen. The other half of Rienzi will be spoken of hereafter. As I fear property will be very low, I give my executors five years to work for a good price. In the meantime that they are waiting to sell, the place can be rented or worked so as to pay all taxes and other charges; any over that to go to Mrs. Bettie Allen's credit."

Under these testamentary provisions the executors named in the will took possession of the plantation after Mr. Allen's death, and proceeded with the operation of the same just as Mr. Allen would have done had he lived. They took off the crop of cane and manufactured sugar therefrom. Not only did they do this, but they proceeded

with the cultivation of a new crop during the following year, and with the manufacture of sugar therefrom. It was not until January, 1896, that their gestion, with respect to the plantation, was terminated by the sale of the plantation with the consent of all parties interested. After the crop, which was standing at the time of the testator's death, had been harvested and manufactured, the executors petitioned for and obtained an order from the court of probate authorizing them to continue the cultivation of the plantation (Trans., p. 65).

On the same day two of the executors, Mrs. Bettie Allen and W. F. Collins, filed what was termed a "provisional account" (Trans., p. 66). In their petition, presented with their account, they stated that they thereby accounted for the whole of the estate except the crop of sugar on the plantation during the year 1894, which they proposed to account for as soon as the same was sold. A few days later the third executor, Ogden Smith, who dissented from the account filed by the other two, filed an account in which he proposed a final distribution of all the property of the estate (Trans., p. 72 *et seq.*). In this account he proposed to turn over the product of the crop which was standing at the date of the testator's death to the legatees of the plantation, on the ground that it formed a part of the realty at that time and passed with it. This contention was maintained by the probate judge. On appeal, the Supreme Court reversed this ruling. We quote the following from the opinion:

"It is plain from the terms of the will that the testator intended that the plantation should be sold and the proceeds distributed as directed by him. Speaking from the time of his death, for the future sale of the property, he said to his executors that they should sell the Rienzi plantation and distribute the proceeds, and until they did sell it the proceeds should go to the wife. The legatees could not sue immediately after the death of the testator for a division in kind, as this would have been contrary to the positive mandate of the testator. The plan-

tation was directed to be sold in the most positive language. * * * So long as the plantation remained in the hands of the executors Mrs. Allen was entitled to the proceeds of the crops."

On March 2, 1895, while the plantation was still being operated by the executors, under the authorization of the probate judge granted on January 24, 1895, and herein above referred to, the act of Congress was passed granting a bounty of eight-tenths of a cent per pound to all producers of sugar, who, having complied with all the requirements of the bounty schedule of the McKinley Act, would have been entitled to a license under said act, if the same had not been repealed. Under this act, the executors of Mr. Allen collected a net bounty of $11,247.65 on the sugar produced from the crop of cane which was standing at the date of the testator's death. The executors thereupon filed second accounts. Mrs. Allen and W. F. Collins filed an account in which they proposed to turn over the proceeds of the bounty collection "to Mrs. Bettie Allen as the owner of the net proceeds of the crop of 1894 on the Rienzi plantation, under the will of the testator and the decree of the Supreme Court," and in which they proposed to charge the net loss on the crop of 1895 to the general assets of the estate, this amount being only $916.19. In other words, they proposed to turn over to Mrs. Allen the large profits of the crop of 1894, without deducting the loss on the crop of 1895. The third executor, Ogden Smith, filed an account in which he proposed to pay over to Mrs. Allen under the former decree of the Supreme Court the net proceeds of sale of the two crops after deducting all expenses incurred by the executors in relation to both, and also the expenses paid by the testator prior to his death in relation to the crop of 1894. He further denied that the bounty money formed any part of the proceeds of the crop of 1894, maintained that this money was an unwilled

asset of the estate and proposed to turn the same over to the legal heirs of the testator. To these accounts appropriate oppositions were filed by the parties interested. Upon the issues thus made the Supreme Court decided, in an opinion handed down on April 12, 1897 (Trans., p. 125), as follows:

1. That the expenses incurred by the testator prior to his death were not to be taken into consideration.
2. That all of the expenses incurred by the executors in the operation of the plantation must be deducted from the proceeds of the sale of the crops made during their gestion, including the deficit on account of the crop of 1895.
3. That the bounty money formed no part of the proceeds of the crop; was not included in the legacy to Mrs. Allen of the net proceeds of the crops during the administration of the executors, was an unwilled asset and passed to the legal heirs.

Before this decree became final a rehearing was granted, restricted to the question of the distribution of the bounty. On this rehearing the Court rendered an opinion (Trans., p. 145), in which, while adhering to its former decision, that the bounty formed no part of the proceeds of the crop and did not pass under the legacy to Mrs. Allen of such proceeds, it proceeded to apportion the bounty between the legal heirs and Mrs. Allen, on the theory that within the meaning and intendment of the act of Congress of March 2, 1895, the testator was the "producer" up to the time of his death, and that, thereafter, within the meaning and intendment of the act, Mrs. Allen was the "producer," and entitled as such to a proportion of the money. The Court decreed that the bounty money should be equally divided between Mrs. Allen and the legal heirs.

Writs of error were applied for and obtained both by the legal heirs and by Mrs. Allen.

Argument.

There are but two possible grounds upon which Mrs. Allen can claim this bounty money: (1) Because it was willed to her by Mr. Allen; or (2) because she was the producer of the sugar within the meaning and intendment of the act of Congress, and was, therefore, the direct beneficiary thereof. The only provision of the will under which she could claim the bounty is that in which the testator authorizes his executors to rent or work the place so as to pay all taxes and other charges, "any over that to go to Mrs. Bettie Allen's credit." The Supreme Court of the State has decided that this language did not include the bounty collected by the executors, and we submit that this decision on this point is conclusive, and will not be reviewed by this Court. In its original opinion on this question the Supreme Court of the State used the following language:

"The claim for bounty had not been collected when the succession was last before us. It was a gratuity from the government, notwithstanding it was based upon an estimate of the crop as a means of calculation, and predicated upon the production of a crop by the owner thereof under rules and regulations which were established by the treasury department.

"The allowance of the bounty was by the government conditioned on the fulfilment by the deceased of certain prerequisites, though payment of it was not made until after his death and subsequent to the filing of the executor's provisional accounts.

"The equitable claim of the deceased to the bounty had been created during his lifetime, and the license obtained and all conditions precedent had been complied with, though no mention of it was made in the will.

"It seems quite clear to our minds that the bounty money which was collected from the government by the executors formed no part of the crops of 1894 and 1895, nor of their proceeds. It was not *in esse* at the time those crops were grown and gathered.

"The executors did nothing but make the necessary proofs preparatory to its collection and receive payment of the money. It must consequently be classed as an unwilled asset, and not as a part of the net proceeds of the crop of 1894, passing under the will of Mrs. Allen."

In its last opinion, rendered on the rehearing of the case, the Supreme Court of the State said: "We desire it to be well understood that, in our opinion, the bounty money is no part of the crop or the proceeds of the crop. The question was, who was the owner and producer of the crop" after the death of the testator?

The bounty fund in this case was collected by the executors, under an act of Congress passed on March 2, 1895, long after the death of the testator and long after the crop of 1894 had been taken off, manufactured and sold by the executors. Even if it had been possible to suppose that *existing* bounty rights might have been included under the terms of the legacy to Mrs. Allen (which we consider impossible), yet the Civil Code of Louisiana expressly forbids the inclusion therein of *this* bounty by the provision of Art. 1718:

"A general legacy does not embrace the things included under the genus, which have been acquired after his death, though by his order."

We submit, therefore that Mrs. Allen can make no claim to the bounty fund in this court on the ground that it was included in the bequest to her of the net proceeds of the crops during the gestion of the executors.

This brings us to the question, and the only question, presented to this Court for determination by the record: Who was the beneficiary of the act of Congress of March 2, 1895, the Succession of R. H. Allen or Mrs. Allen?

We submit that the pretension of Mrs. Allen that she was the beneficiary of the act can not be sustained for the following reasons:

1. Because the bounty was granted in express terms "to those producers who complied with the provisions of the tariff act of October 1, 1890."

This was a gift of the government made directly to the licensees of the government under the prior tariff act, and it was solely in virtue of his quality as such licensee that

Mr. Allen, and after his death, his succession, became entitled to the same. No one but Mr. Allen or his personal representatives could have collected the same, and no transfer of this right could have been made. Any such transfer would have been stricken with nullity under the terms of Sec. 3477 of the Revised Statutes. It was only because the sugar was manufactured by the personal representatives of Mr. Allen, who had complied with the provisions of the MsKinley Act, that the bounty was collected at all. If it had been produced by any other person, the bounty could not have been collected.

2. Because Mrs. Allen was never in any sense the owner of the crop and did not produce any sugar. Nor did she ever contribute one cent to the expenses of cultivation and manufacture by the executors.

Nobody ever contended that she was entitled to anything but the net proceeds of the crops during the gestion of the executors after deducting all expenses and charges. The contention that she became the owner of the standing crop at the instant of the death of Mr. Allen is utterly without foundation. There is not a line in the will to support such a contention. It was originally claimed by the legatees of the plantation that they were entitled to this crop, in spite of the fact that it was harvested and manufactured by the executors, and in spite of the clause of the will giving to Mrs. Allen the net proceeds of the working of the place by the executors. The Supreme Court of the State denied this claim, and held that as the cultivation of the crop was completed, and as the cane was manufactured into sugar by the executors, Mrs. Allen was entitled to the net proceeds. But neither counsel nor Court contended that she was the owner of the standing crop. That she never was is perfectly clear. Suppose the day after the death of Mr. Allen, some one had proposed to buy the plantation with the standing crop on

terms satisfactory to the executors, and suppose the place had been then sold: To whom would the whole proceeds of sale have belonged? The question is answered in the very opinion of the Supreme Court in which Mrs. Allen was awarded the net proceeds. The Court says:

> "If the plantation should have been sold with the growing crops, it would have passed with the place and increased the proceeds. So long as the plantation remained in the hands of the executors, Mrs. Allen was entitled to the proceeds of the crops. If not sold in accordance with the directions of the testator, it is only at the moment of delivery to the legatees, if they choose to hold it in indivision, that the growing crops pass to them as a part of the immovable" (Trans., p. 118).

This language makes it perfectly clear that Mrs. Allen was never the owner of the crop of 1894, or of the crop of 1895. She was merely entitled, under the terms of the will, to the net proceeds of such crops as might be made and sold by the executors during their gestion.

It is equally clear that Mrs. Allen never produced any sugar. The plantation was cultivated and the crops manufactured into sugar by the executors, who accounted to the Court for the proceeds. Nor can we understand how it can be claimed that Mrs. Allen ever contributed one cent to the expense of cultivation and manufacture. These expenses were paid by the executors out of the general assets of the succession, to which the amounts so expended were, of course, repaid out of the proceeds of the crops when sold, for the reason that Mrs. Allen was entitled under the will only to the *net proceeds* after deduction of these expenses and charges. But, manifestly, this was in no sense a charge against Mrs. Allen.

Counsel for Mrs. Allen seems to consider that his position that she was the owner of the crop is fortified by the holding of the Supreme Court of the State that she was "responsible for the deficit on the crop of 1895." We quote the following from his brief (p. 19):

"Especially are we confirmed in this view when the Supreme Court held her responsible for the deficit on the crop of 1895. No grounds would exist on which to subject her to that charge as the result of the plantation operations of 1895, if, as here contended by the legal heirs, her rights as legatee under the bequest are postponed until after the sale of the crop by the executors, and then vested only in the net proceeds resulting from the sale. Under such a construction of the bequest her rights as legatee upon the crop would be contingent, eventual and dependent on net proceeds over expenses, resulting from the sale of the crop, but such a construction could not create or give rise to any obligation on her part to pay any loss which might enure from a failure of the proceeds to pay expenses."

The conclusion which counsel draws in this paragraph is based upon an entirely false premise, viz.: that the Court charged Mrs. Allen with the deficit on the crop of 1895 or made her responsible for same. The Court did no such thing. It merely charged this deficit to the proceeds of the crops sold during the gestion of the executors in order to determine the net proceeds of their administration. The executors manufactured and sold two crops, the crop of 1894 and the crop of 1895. The first yielded a large profit; there was a deficit of about $900 on the second. Mrs. Allen was entitled only to the net proceeds of their whole administration. In order to arrive at this amount, it was, of course, necessary to deduct the deficit on the crop of 1895. If the whole administration of the executors had shown a loss there would have been no possible ground upon which this loss could have been saddled upon Mrs. Allen, a consideration which in itself snfficiently negatives the theory that she was the owner of the crops and the producer of the sugar from the time of the death of Mr. Allen.

3. Because evén if Mrs. Allen had been the owner of the crop and the producer of the sugar, she would not have been entitled to the bounty under the act of Congress because she was not a producer who had "complied with all the provisions of the previous tariff act."

She would have had no more right to the bounty than would a purchaser of the plantation at the death of Mr. Allen who had not complied with the provisions of the McKinley act, and under the terms of the act and those of Sec. 3477 of the Revised Statutes, we think it very clear that such a purchaser would have had no right whatever to the benefits of the act.

We, therefore, submit that the claim of Mrs. Allen to the whole of the bounty fund, as the direct beneficiary of the act of Congress of March 2, 1895, ought to be dismissed, and that the judgment of the Supreme Court of Louisiana awarding to her one-half of the fund on the ground that she was entitled to that proportion under the said act of Congress should be avoided and reversed, and a judgment rendered decreeing the bounty fund to belong to the succession of R. H. Allen and as such, under the decisions of the State Supreme Court, to be payable to his legal heirs.

We note a suggestion in one of the briefs submitted on behalf of Mrs. Allen that this Court is without jurisdiction in No. 176 of these consolidated causes for the reason that plaintiffs in error in that cause, the executor, Ogden Smith, and the legal heirs of the deceased, R. H. Allen, do not claim the fund in controversy under the act of Congress, but by inheritance from R. H. Allen.

It is true that the plaintiffs in error claim the fund by inheritance from their ancestor, R. H. Allen; but their claim is based upon the act of Congress. The situation of the parties to this litigation may be stated thus:

Mrs. Allen claimed in the State Court that she was the direct beneficiary of the act of Congress of March 2, 1895, and as such entitled to the whole fund. The Supreme Court of the State denied this claim as to one-half

of the fund, and she applied for and obtained a writ of error from this Court.

The legal heirs of R. H. Allen claimed in the State Court that under the act of Congress the succession of Allen was the direct and sole beneficiary of the bounty provision; that this bounty fund was not included in any bequest contained in the will, and that they were, therefore, entitled to the fund. The Supreme Court of the State while admitting that the bounty fund was not included in any bequest of their ancestor, and that they were entitled to so much thereof as belonged under the act of Congress to his succession, denied that under that act his succession was the beneficiary of more than one-half of the fund. By its judgment the State Court denied a title asserted under an act of Congress, not immediately it is true, but mediately through the right of inheritance.

Respectfully submitted,

CHAS. E. FENNER,
SAM. HENDERSON, JR.,
CHARLES PAYNE FENNER,

Attorneys for J. L. Aucoin, Administrator of the Succession of J. H. Allen.

[16,670]

(16,685)

Supreme Court of the United States.

WASHINGTON, D. C.

NO. 168

MRS BETTIE ALLEN, Executrix etc., ET AL,

—VS.—

OGDEN SMITH, Executor etc, ET AL.

NO. 176

OGDEN SMITH, Executor, ET AL,

—VS.—

MRS. BETTIE ALLEN, Executrix, ET AL.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

Brief on behalf of the Smith heirs, Plaintiff in error and

Defendant in error.

—SYLLABUS.—

1. The bounty granted by Act of Congress of March 2nd, 1895, on the crop of 1894 was the recognition, on the part of the Government, of a moral obligation. 163 U. S. Reports p. 430.
2. This moral obligation sprang into existence on August 28th, 1894, the date of the repeal of the McKinley bounty act.
3. Mr. R. H. Allen, the testator, died Sept. 19th. 1894, hence this moral obligation of the Government was due to him, and was actually existent at the date of his death, he having complied with all of the requirements of the McKinley act.
4. The crop of sugar of 1894 was manufactured by the executors of R. H. Allen's estate, and the bounty under act of March 2nd, 1895, was collected by them, as representatives of his estate.
5. The will of Mr. Allen does not dispose of the right to the bounty either directly or by implication, as the bounty forms no part of the crop or of its preceeds. 48 L. A. p. 488.
6. It necessarily follows that the right to the bounty being an unwilled asset, became vested in his legal heirs at the moment of his death and they alone are entitled to it.
7. In the eye of the law, the personality of Mr. Allen was continued in his legal representatives, his legal heirs. At his death they were seized of his entire estate, under the obligation to discharge the legacies of his will. They were, therefore, the producers and manufacturers of the crop of 1894 in the purview of the law, and within the meaning of the Act of Congress of March 2nd, 1895.

MAY IT PLEASE THE COURT ;

In order to clearly comprehend the issues before the Court it is necessary to make a brief historical review of the events leading up to this litigation.

Mr. R. H. Allen, a large sugar planter residing in the Parish of Lafourche, Louisiana, died on September 19th, 1894, and left a will making various bequests, but this will did not dispose of all of his property, and he named no residuary legatee.

The following clause in the will is the one out of which the present controversy over the bounty grows, viz :

"I appoint as my Executors Ogden Smith and W. F. Collins residing on Rienzi plantation I also appoint Mrs. Bettie Allen Executrix. I give them ful power te sell Rienzi plantation When Ever they find a good offer all the property there belonging. When it is sold half of all the proced Cash Notes &c is to belong to my wife Bettie Allen The other hafe will be spoken of hereafter As I fear property will be very low I give my Executors five years to work for a good price in the Meantime That they are waiting to sell, the place can be worked so as to pay all Taxes and other Charges, any over that to go to Mrs. Bettie Allen's credit. The other half of Rienzi and a claim I hold against the Government of the United States for army supplies I think is about one hundred thousand dollars These two amounts or halfs I intend to give to the families of my brother Thomas H. Allen's four children R. H. Allen Jr for his family's use Thomas H. Allen Jr for his wife and children Harry Allen for his wife and children Mrs. Mary Louise wife of J. C. Leatham of New York City" &c, &c.

The will was in olographic form, was duly probated and all the executors named qualified The crop of cane on the Rienzi plantation, after his death, was harvested and saved by his executors, the funds for doing this being taken from the

general cash funds of the estate. The executors differed as to the proper distribution of the estate to the different legatees, and executors, Collins and Mrs. Allen, filed one account, and executor, Ogden Smith, filed another. To both of these accounts the legatees and interested parties filed oppositions. The controversy was taken to the Supreme Court of the State of Louisiana and was finally disposed of by the decision of that Court which is reported in the 48th Louisiana Annual at page 1036. In that decision the status of Mrs. Allen is fixed as a particular legatee. She contended that she was a residuary legatee, but the Court decided against her contention and fixed her status, as we say, as a particular legatee.

The Court also held that the three neices named in the will were, by the terms of the will, excluded from participation in the residium or unwilled portion of the estate. The Court also held that Mrs. Bettie Allen, surviving wife of the deceased was entitled, under the clause of the will above quoted, to the net proceeds of the crop of 1894.

At the time of the filing of their accounts by the executors the crop of 1894 had not been disposed of by them, and the bounty granted by the act of Congress giving 8-10 of a cent a pound, approved March 2nd, 1895, had not been collected, consequently these two items were reserved to be further accounted for by the executors. In their second accounts for these two items the executors of the estate were again at variance. Executors Collins and Mrs. Allen proposed in their account to give the whole bounty, which had in the meantime been collected and which amounted to $11,569.35, to Mrs. Allen Executor Smith, on the other hand, treated the bounty as an unwilled asset and proposed to distribute it equally among the three sets

of heirs, the Allens, the Turners and the Smiths, leaving out the three nieces that had been excluded by the first judgment of the Supreme Court of Louisiana.

Numerous oppositions were filed to the accounts and the case went a second time to the Supreme Court of the State of Louisiana for final adjudication. This Court in this second appeal, reported in the 49th Annual page 1096, at first held that the bounty, under the act of Congress of March 2nd, 1895, was an unwilled asset of the estate, and was to be distributed among the legal heirs, the Turners, the Smiths and the Allens, excluding from participation therein the three nieces that had been excluded in the first opinion rendered. An application for rehearing was made by Mrs. Allen, and it was granted only on the question of the bounty.

The Court, on the rehearing reported in 49th Louisiana Annual page 1112, changed its first opinion. It gave to Mrs. Allen one-half of the bounty and gave to the three sets of heirs the other half in equal proportions. From this decision of the Louisiana Court all parties interested have prosecuted a writ of error to this Honorable Court.

From the foregoing, therefore, it will be seen that the only question presented to this Court is the proper destination of the bounty, $11, 569. 35 granted under the act of March 2nd, 1895.

Mrs. Allen contends that under the will and under the act of Congress she is entitled to the entire bounty. The legal heirs of Mr. Allen, on the other hand, contend that neither under the will nor under the act of Congress is she entitled to the bounty, but that it is an unwilled asset of the Allen estate, falls into the unwilled residuum, and therefore, the whole bounty should be

distributed among the legal heirs.

The question presented is full of difficulties and perplexities. For its proper solution an interpretation of the bounty laws is necessary, and we were about to add also an interpretation of the will and testament of Richard H. Allen, but this latter is not necessary, as the Supreme Court of Louisiana placed the right of Mrs. Allen to one-half of the bounty solely under the bounty laws.

The following facts are the salient ones: Mr. R. H. Allen died on the 19th, of September 1894. The McKinley bill was repealed by Congress on the 28th, of August 1894. The bill was, therefore, repealed nearly a month before the death of Mr. Allen. The record shows that Mr. Allen, prior to July 1st, 1894, had applied for a license to produce sugar and had complied strictly with the McKinly act of 1890, and that if that act had continued in existence he would have been entitled to a license under that law

The crop of 1894 was saved and manufactured by the executors of Mr. Allen. The act of Congress giving 8-10 of a cent a pound to the producers of sugar who had complied with the provisions of the McKinley act was approved on March, 2nd, 1895. The bounty granted under this act was collected by the executors of R. H. Allen. The question, therefore, is, who was the producer of the sugar made on Rienzi plantation from the crop of 1894 comprised in the period commencing Angust 28th, 1894 and ending June 30th, 1895, both dates inclusive?

The Supreme Court of the State of Louisiana has already decided that the bounty forms no part of the crop, and forms no part of the proceeds of the crop. Deloghny vs. Her Creditors 48 A. 448. That Court reaffirms in this case the doctrine laid down

by them in the Deloghny case. Therefore, while, under the will of Mr. Allen, Mrs. Bettie Allen is the legatee of the net proceeds of the crop of 1894, she is not, under said clause in the will entitled to the bounty because the bounty is not an accessory of the crop. Her title to the bounty cannot be found in the testament of Mr. H. R. Allen, and whatever rights she has must, therefore, be determined by the facts existing after his death and by the laws of the United States relating to bounties. The will of Mr. Allen contains nothing to show any disposition of the bounty or of any rights growing out of the laws relating to bounties. In the case of the United States vs. Realty Company, and the United States vs. Andrew H. Gay, 163 U. S. Reports, page 430, this Honorable Court, after reviewing all the law on the subject and the situation of the sugar producers of the country, concluded that the act of Congress of 1895 granting a bounty of 8-10 of a cent a pound was the recognition and discharge of a moral obligation on the part of the Government. Now in this case, to whom was the moral obligation due by the Government and when did this moral obligation spring into existence ? It seems clear that the moral obligation was due to Mr. R. H. Allen and it sprang into existence on the 28th of August 1894, the date when the McKinley bill was repealed. Mr. Allen was living at that date and this moral obligation was beyond a doubt due to him by the Government. He had long prior thereto been a sugar planter, had had the protection secured by tariffs in former years and later the protection secured by the bounty under the McKinley bill. At the time of his death this moral obligation on the part of the Government was an existing right. That right he never disposed of by will, and that right descended to his legal hairs by operation of law. This seems simple enough

and conclusive, but the difficulty arises when we read the act of Congress of March 2nd, 1895, relating to bounty on sugar, which reads as follows :

"That there shall be paid to those producers who complied with the provisions of the bounty law as contained in Schedule E., of the Tariff Act of 1890, by filing a notice and application for license and bond therein required, prior to July 1st, 1894, and who would have been entitled to receive a license as provided for in said act, a bounty of 8-10 of a cent per pound on all sugars actually manufactured and produced in the United States, testing not less than 80 degrees by the polariscope, from beets, sorghum or sugar-cane grown or produced within the United States during that period of the fiscal year ending June 30th, 1895, comprised in the period commencing August 28th, 1894, and ending June 30th, 1895, both dates inclusive, and for this purpose the sum of Five Million Dollars or so much thereof as may be necessary, is hereby appropriated etc."

The crop of 1894 was planted, cultivated and made by Mr. Allen during his life-time; he died on the 19th, of September 1894, and the crop was manufactured and saved by his executors. Mrs. Allen was the legatee of one half of the price of the plantation and the net proceeds of the crop of 1894. This crop is the crop which received the bounty under the act of March 2nd, 1895. The question is, under these circumstances, who was the producer of the crop of sugars on the Rienzi plantation for the year 1894, within the meaning of the Act of Congress of March 2nd, 1895? We contend that it was the legal heirs of Mr. Allen who had, at the date of his death, inherited the right or moral obligation that was due to R. H. Allen by the United States Government.

We think this will be plainly seen from an examination of he law as to the status of property at the death of a person in

Louisiana. The law of Louisiana, like nature, abhors a vacuum; it recognises no inter-regnum, and the political maxim, "Le roi est mort, vive le roi" finds an echo in the legal maxim "Le mort saisit le vif." The Civil Code of Louisiana recognizes the principles enunciated in this maxim in articles 934, 940, 941, 942, 943 and 944. Article 940 declares, "A succession is acquired by the legal heir, who is called by law to the inheritance, immediately after the death of the deceased person whom he succeeds. This rule applies also to testamentary heirs, to instituted heirs and universal legatees, but not to particular legatees."

And article 943 declares, "The heir being considered seized of the succession from the moment of its being opened, the right of possession, which the deceased had, continues in the person of the heir, as if there had been no interruption, and independent of the fact of possession."

There is an exception to this general rule established by these articles to be found under the head of Universal Legacies, articles 1607, 1608 and 1609 of the Civil Code of Louisiana. When there are forced heirs, article 1607 declares, these heirs are seized of right by the death of all the effects of the succession, and the universal legatee is bound to demand of them, the delivery of the effects included in the testament. And article 1609 declares, When, at the decease of the teststor, there are no forced heirs, the universal legatee, by the death of the testator, is seized of all the effects of the succession without being bound to demand the delivery thereof.

In the present controversy the contest is between Mrs. Allen, a particular legatee under the will of Mr. Allen, and the legal heirs of Mr. Allen. The maxim, "Le mort saisit le vif" has been expressly recognized by the Supreme Court of Louisiana

which has held that this maxim is a rule of our jurisprudence and that the seizing of the succession representative does not exclude that of the heir. 15 La. 527; 7 Rob. 183: 12 Rob. 258; 2 A. 339; 4 La. 571; 5 A. 113; 2 Aa. 299; 12 A. 577.

Mr. Marcadé in discussing the seizin of the heir in Vol. 3, Section 47 of his Explication du Code Civil commenting on article 794 of the Code Napoleon declares,

"La saisine n'est pas toujours accompanée de la propriété des biens. Ainsi, quand le defunt laisse un heritier legitime et un enfaut naturel, ce dernier, sans être saisi, c'est-a.dire sans avoir la posessesion, d'aucun bien, est cependant proprietaire d'une fraction de la succession ; en sorte que l'heritier legitime, quoique saisi, c'est-a-dire ayant la possession legale, de la succession entiere, n'a pourtant que la propriété d'une partie. Il en serait de meme si cet heritier se trouvait en face d'un ou de plusieurs legataires qui lui enlevent une parti plus ou moins grande de la succession ; c'est toujours l'heritier qui est saisi des tous les biens, qui les posséde tous, et qui les a sous son administration, jusqu'a ce que les legataires viennent se faire delivrer ceux qui leur appartiennent. L'heritier saisi, possesseur et administrateur des biens, peut meme n'avoir la propriété d'aucune partie de ces biens; c'est ce qui arriverait si, l'heritier n'etant pas d'ailleurs reservataire, le defunt disposait par des legs particuliers ou a titre universel de tous les biens qui composent son patrimoine.

Il n'y a qu'un seul cas ou l'heritier legitime ne soit pas saisi : c'est quand 1st cet heritier n'est pas reservataire, et 2 que la totalite des biens lui est enlevee par un legataire universel. Dans ce cas, c'est au legataire universel que la saisine est accordee (art. 1006) ; en sorte qu alors l'heritier est écarté de la pos-

session comme de la propriété, et reste completment etranger a la succession. Hors ce cas, c'est toujours l'heritier legitime qui est investi de la possession ; et un te stateur ne peut pas, alors meme qu'il retire a son heritier la propriété de tours ses biens, lui enlever la saisine, soit pour la donner a tel ou tel, soit pour donner a personne. Il est vrai qu'un testateur peut, en une on plusieurs personnes pour faire executer son t, leur donner la saisine de son mobilier (art. 1025, 1026); ette saisine speciale, qui ne peut jamais frapper sur les eubles, se trouve d'ailleurs soumise a la volonte de l'heritier, r celui ci peut la faire cesser en remettant aux executeurs testamentaires une somme suffiante pour l'acquittement des legs mobiliers (art. 1027)."

Therefore, as this author says, it is always the heir who is seized of all the effects of the estate, who possessess all, and who has them under his administration until the legatees cause to be delivered to them those legacies that belong to them. With a single exception it is always the heir who is invested with possession. The testator cannot take away the seizin from his heir, and in appointing an executor or several executors to carry out his will he can giue them the seizin of his estate, but this special seizin iu no way affects the seizen of the heir. See this subject discussed also in Cross on Successions, page 40 et seq.

From these principles of the laws of Louisiana it results that at the death of Mr. Allen his estate was not entirely disintegrated ; it did not fall apart into the separate particular legacies that he made, but the whole remained together as an entity in the possession of his heirs until the final settlement and liquidation of the estate by the payment of debts and legacies, or

in the language of article 942 of the Civil Code of Louisiana, "The right of possession which the deceased had continues in the person of the heir as if there had been no interruption and independent of the fact of possession."

Therefore, we claim that the producers of the sugar on the Rienzi plantation, from the crop of 1894 were the legal heirs, personal representatives of Mr. Allen, in whose person his possession continued as if there had been no interruption. At the date of the production of the sugar the estate was still in the hands of the executors, in the legal possession of the heirs, and totally undistributed. Not a legacy was claimed or called for and the whole matter was still in graemio legis. Mrs. Allen, as we have repeatedly stated, is nothing more than a particular legatee. A particular legatee, under the Louisiana law, never has any seizin, but must demand his legacy, and is only dispensed from this demand under certain circumstance. Civil Code of Louisiana articles 1626, 1627 and 1628. Mrs. Allen does not come under any of these exception. The will of Mr. Allen did not give the seizin of his estate to his executors, and Mrs. Allen was only in possession of the effects of the possession as one of three executors. Under no circumstances, then, can Mrs. Allen claim the seizin as particular legatee of any part of the succession.

In the succession of Frazer , 23 A. 594 the Supreme Cour of Louisiana laid down the following doctrines :

"A universal legatee who is also a testamentary executor although he has been recognized by the Probate Court in the two capacities and ordered to be put in possession, can be compelled to give security under article 1670 of the Civil Code of Louisiana if he has continued to act as executor." The Court declared, "In

order to vest the property of the succession in the universal legatee who is at the same time testamentary executor, there must be some deliberate act on his part showing he proposed to take possession as such, and the same Court again in Bird vs. Jones, 6 Annual 643, Succession of Townsend vs. Sykes, 38 Annual 859 enunciated the principles as follows: "Where one is executor and at the same time universal legatee, and takes possession as executor, he will not be regarded as legatee, nor can he, without judicial authorization, change the nature of his possession."

If this is the rule as to a universal legatee, how much more stronger does it apply to a particular legatee setting up the pretentions of Mrs. Allen?

Mrs. Allen's possession has always been as joint executrix, and not as legatee, so far as the plantation and crop were concerned, and she so declares by her position before the Court where she is asking, as executrix, to be authorized to pay the legacies to other legatees as well as herself.

To show the untenability of the position of Mrs. Allen in making her claim for the bounty, suppose that instead of being a testamentary gift Mr. Allen had made to her, before his death, a donation inter-vivos under the laws of Louisiana, of one-half of the value of his Rienzi plantation and all the net proceeds of the crop grown on said plantation in the year 1894, and suppose Mr. Allen had lived long enough to collect the bounty himself, who, under the state of facts, would be entitled to the bounty? We do not think the question admits of a doubt but that Mr. Allen would be entitled to the bounty, and Mrs. Allen to no claim in the bounty. In what respect is there any difference between this supposed case and the case actually before the Court. We con-

fess that we can see none, and that Mrs. Allen has no more rights under the actual facts than she would have under the supposed case. Mr. Allen, in the supposed case, did not part with any bounty rights and would be entitled without question to the whole bounty. In the actual case before the Court Mr. Allen did not part with his bounty rights, was succeeded by his heirs, to whom all his rights descended that were not otherwise disposed of, and they, it seems to us, are entitled to the whole bounty.

In no view could Mrs Allen be considered as the producer of the crop of 1894 on the Rienzi plantation, under the bounty laws. She had not complied with the McKinley law, in fact could not, because that law was repealed during the life-time of Mr. Allen. She would not, under that law be entitled to a license and this was actually necessary in order to make her a producer within the meaning of the Act of Congress of March 2nd, 1895, because, under that act, only those producers were entitled to the bounty who would have been entitled to a license under the McKinley Act, and who produced sugar from cane, beets, etc., grown and raised in the United States. Mrs. Allen, under the will of Mr. Allen, was not the owner of the one-half of the Rienzi plantation, she was not the owner of the crop of 1894. She was a mere beneficiary. This is the unmistakable meaning of the will of Mr. Allen, and the Supreme Court, when the case was first brought before it in the 48th Louisiana Annual, page 1047, so declares. "They say, "The legatee could not sue immediately after the death of the testator for a partition in kind as this would have been contratry to the positive mandate of the testator. The plantation was directed to be sold in the most positive language. The legatees, then, were only interested in

the proceeds of the sale. The net proceeds belong to the wife from the date of the death of the testator until the sale of the place. No other reasonable interpretation can be given to the language of the testator."

If Mrs. Allen, then, was not the owner of the crop of 1894, but only of its net proceeds, if she was not the owner of the half of the plantation on which the crop was produced, under what theory is it possible that she can be regarded as the producer of sugar within the meaning of the Act of Congress of March 2nd, 1895?

To sum up our argument, the bounty granted by the Act of Congress of March 2nd, 1895, on the crop of 1894, was the recognition on the part of the Government of a moral obligation. This obligation existed in favor of those who had produced and manufactured sugar prior to the passage of said act, who had been protected first by a tariff and secondly by a bounty. Mr. Allen belonged to that class. At the time of his death, on the 19th of September 1894, this moral obligation on the part of the Government was in existence. This moral obligation being undisposed of by his will passed, by the laws of inheritance, to his heirs. The heirs of Mr. Allen being, in legal contemplation, in possession of all the property of his estate, subject to the demands of the legatees, were the real producers of the sugar of the crop of 1894, their possession being a mere continuance of the possession of Mr. Allen.

We, therefore, ask the Court that the judgment of the Supreme Court of Louisiana, in relation to the bounty in this case, be reversed, annulled and set aside, and that the said bounty be adjudged to belong to the legal heirs of the late Richard H. Allen in the proportion of one-third each in the three sets of

heirs, the Turners, the Smiths and the Allens.

Respectfully submitted,

L. F. SUTHON.

Henry Chiarella

Attorney for Ogden Smith et al

Defendant in Error in No. 168

Plaintiffs in Error in No. 176

For 168 & 176.

Sup. Brf. of Fenner & Fenner for P. C. in 176.

JAN 27 1899
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

No. 168.

Filed Jan. 27, 1899.

MRS. BETTIE ALLEN ET AL.

versus

OGDEN SMITH ET ALS.

No. 176.

OGDEN SMITH ET ALS

versus

MRS. BETTIE ALLEN ET ALS.

SUPPLEMENTAL BRIEF ON BEHALF OF J. L. AUCOIN, ADM'R., PLAINTIFF IN ERROR IN NO. 176, DEFENDANT IN ERROR IN NO. 168.

CHAS. E. FENNER,
SAM. HENDERSON, JR.,
CHAS. PAYNE FENNER,
Atlys. for J. L. Aucoin, Administrator, Plaintiff in Error in No. 176.

SUPREME COURT OF THE UNITED STATES.

No. 168.

MRS. BETTIE ALLEN ET AL.

versus

OGDEN SMITH ET ALS.

No. 176.

OGDEN SMITH ET ALS.

versus

MRS. BETTIE ALLEN ET ALS.

SUPPLEMENTAL BRIEF ON BEHALF OF J. L. AUCOIN, ADM'R., PLAINTIFF IN ERROR IN No. 176, DEFENDANT IN ERROR IN No. 168.

May It Please the Court:

In view of some of the questions propounded from the bench during the argument of this cause, we venture to submit a brief supplemental argument and memorandum of authorities on the nature and scope of the Court's jurisdiction in this case, and the extent to which that jurisdic-

tion is affected by the opinion and judgment of the Supreme Court of Louisiana.

In its original opinion in this case the Supreme Court of Louisiana considered the claim then made on behalf of Mrs. Bettie Allen, that she was entitled to the bounty fund which had been collected by the executors, because it was included in the bequest to her of the net proceeds of the crop manufactured by the executors. The Court denied this claim, holding that the bounty fund was not included in any bequest of the testator to Mrs. Allen or to any one else, that it was an unwilled asset of the estate, and that the legal heirs were, therefore, entitled to it. No Federal question was involved in this decision. The question was simply one of the interpretation of the will.

Mrs. Allen thereupon presented a petition for a rehearing in which she set up that under the terms of the will and the facts as disclosed in the record, she was the "producer" within the meaning and intendment of the act of Congress, and was, therefore, the direct beneficiary of the act, entitled under its terms to the fund.

The rehearing having been granted, the Supreme Court of Louisiana rendered a judgment in Mrs. Allen's favor for one-half of the bounty on the ground that under the terms of the will and the facts of the case, she was the "producer," within the meaning and intendment of the act of Congress, from the time of the testator's decease, and that as such she was entitled to one-half of the bounty as the direct beneficiary of the act.

This judgment was based wholly upon the decision of this Federal question. There was no other matter or issue adjudged sufficiently broad to maintain the judgment. Lest there might be any misunderstanding, the Court was careful to express its adherence to its original opinion that the bounty money was not included in the bequest to Mrs. Allen of the net proceeds of the crop.

Now we respectfully submit that the function of this

Court in this case, and its sole function, is to determine the correctness *vel non* of the decision of the State Court that Mrs. Allen was the "producer," within the meaning and intendment of the act of Congress. and as such the direct beneficiary of the act.

We invoke the rules laid down by this Court in the case of Murdock vs. City of Memphis, 20 Wall. 590:

> "1. That it is essential to the jurisdiction of this Court over the judgment or decree of a State Court that it shall appear that one of the questions mentioned in the statute must have been raised and presented to the State Court; that it must have been decided by the State Court against the right claimed or asserted by the plaintiff in error, under the Constitution, treaties, laws or authority of the United States, or that such a decision was necessary to the judgment or decree rendered in the case.
>
> "2. These things appearing, this Court has jurisdiction, and must examine the judgment so far as to enable it to decide whether this claim of right was correctly adjudicated by the State Court.
>
> "3. If it finds that it was rightly decided, the judgment must be affirmed.
>
> "4. If it was erroneously decided, then the Court must further inquire whether there is any other matter or issue *adjudged by the State Court* (italics ours) sufficiently broad to maintain the judgment, notwithstanding the error in the decision of the Federal question. If this be found to be the case, the judgment must be affirmed without examination into the soundness of the decision of such other matter or issue.
>
> "5. But if it be found that the issue raised by the question of Federal law must control the whole case, or that there has been no decision by the State court of any other matter which is sufficient of itself to maintain the judgment, then this Court will reverse that judgment and will either render such judgment here as the State Court should have rendered, or will remand the case to that Court for further proceedings, as the circumstances of the case may require."

Applying these rules to this case, we submit that this Court will examine the judgment so far, and so far only, as to determine whether the claim under the act of Congress was correctly adjudicated, and there being no other matter or issue adjudged by the State Court sufficiently broad to maintain the judgment, will, if error be found in this respect, reverse the judgment.

In reviewing the decision of this Federal question we further submit that this Court is not bound by the interpretation of the State Court of those clauses of the will the interpretation of which is necessary to a decision of the Federal question. The question being who was the "producer" within the meaning and intendment of the act of Congress, this Court must interpret for itself and independently of the State Court those clauses of the will the interpretation of which is necessarily involved in the decision of these questions.

So, in cases where the question arises as to whether a contract has been made which a State statute impairs, this Court has uniformly held that it would decide such questions for itself, whatever may have been the decision of the State Court.

McGeehey vs. Virginia, 135 U. S. 662; Wright vs. Nagle, 101 U. S. 791.

Jefferson Bank vs. Skelly, 1 Black, 436.

And in a suit brought to this Court from a State court which involved the constitutionality of ordinances made by a municipal corporation in the State, this Court held that it would put its own independent construction on the ordinances.

Yick Wo vs. Hopkins, 118 U. S. 356.

In the case last cited the opinion of the Court was delivered by Mr. Justice Matthews, who said:

> "In the case of the petitioner brought here by writ of error to the Supreme Court of California, our jurisdiction is limited to the question whether the

> plaintiff in error has been denied a right in violation of the Constitution, laws or treaties of the United States. The question whether his imprisonment is illegal under the Constitution and laws of the State, is not open to us. * * * That, however, does not preclude this Court from putting upon the ordinances of the supervisors of the county and city of San Francisco an independent construction; for the determination of the question whether the proceedings under these ordinances and in enforcement of them are in conflict with the Constitution and laws of the United States, necessarily involves the meaning of the ordinances, which, for that purpose, we are required to ascertain and adjudge."

So, in this case, we submit that the jurisdiction of this Court is limited to the question whether the plaintiffs in error have been denied a right in violation of the laws of the United States; that the question whether they have been denied any rights under the will and the laws of the State is not open to the Court, but that this does not preclnde the Court from putting its own independent construction on the will, in so far as this construction is necessarily involved in the determination of the claim under the laws of the United States.

In its opinion on the rehearing the State Court used the following language:

> "But there are other clauses of the will which, in our view, extend her right and show that she was the producer after the death of Mr. Allen. She paid all the expenses of the crop; she was to receive the proceeds under the terms of the will; indeed she was the owner of the crop. She can well be considered, as we think, the producer."

Under the decisions which we have cited we insist that the State Court could not deprive this Court of jurisdiction of the Federal question decided by its interpretation for the purpose of that decision of clauses ot the will the interpretation of which was necessarily involved in the determination of the Federal question.

Mrs. Allen was certainly never the owner of the crop, and as certainly never contributed one cent to the expenses of making it or manufacturing it into sugar. In our previous brief we have fully set out the considerations which, in our view, make it impossible that her claim to have been the direct beneficiary of the act of Congress should be sustained.

The answer to the following question would seem to us decisive of the question whether Mrs. Allen or the estate of R. H. Allen was the "producer" of the sugar and as such the beneficiary of the act of Congress.

Suppose between the time the sugar was manufactured and sold by the executors, in 1894, and the time the ac of Congress was passed, in August, 1895, creditors of the estate had turned up with claims aggregating in amount more than the assets in the hands of the executors, to whom would the bounty fund have gone, to Mrs. Allen or to the creditors?

Under the recent decision of this Court in Briggs vs. Walker, there can be no doubt that the money would have gone to the creditors. This would seem to show conclusively that the estate and not Mrs. Allen was the beneficiary.

The truth is, if it please the Court, that Mrs. Allen's right to any part of this fund, if she has any, is based upon the will, and not upon the act of Congress. She presented this claim to the State Court, which rejected it. This Court is without jurisdiction to review that decision.

Respectfully submitted,

CHAS. E. FENNER,
SAM. HENDERSON, JR.,
CHAS. PAYNE FENNER,

Attys. for J. L. Aucoin, Administrator, Plaintiff in Error in No. 176.

ALLEN *v.* SMITH.

SMITH *v.* ALLEN.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Nos. 168, 176. Argued January 19, 1899. — Decided March 6, 1899.

The manufacturer of the sugar, and not the producer of the sugar cane, is the person entitled to the "bounty on sugar" granted by the act of March 2, 1895, c. 189, to "producers and manufacturers of sugar in the United States."

Statement of the Case.

THIS was a controversy arising over the distribution of the estate of Richard H. Allen, a large sugar planter of La Fourche Parish, Louisiana, who died September 14, 1894, leaving a will of which the following clauses only are material to the disposition of this case:

"I give to my wife, Bettie Allen, one half of my Rienzi plantation and one half of all tools, mules, etc. The names of my executors, etc., will be named hereafter. My executors shall have from one to five years to sell and close up the estate, as I fear property will be very low and dull. They can sell part cash, part on time, eight per cent interest with vendor's lien. I will that my wife do have one half of everything belonging to Rienzi, except the claim due me by the United States; that and other property I will speak of further on. I appoint as my executors, Ogden Smith and W. F. Collins, residing on Rienzi plantation. I also appoint Mrs. Bettie Allen, executrix. I give them full power to sell Rienzi plantation whenever they find a good offer for all the property there belonging. When it is sold half of all the proceeds, cash, notes, etc., is to belong to my dear wife, Bettie Allen. The other half will be spoken of hereafter. As I fear property will be very low, I give my executors five years to work for a good price. In the meantime that they are waiting to sell, the place can be rented or worked so as to pay all taxes and other charges; any over that to go to Mrs. Bettie Allen's credit."

Letters testamentary were issued to William F. Collins, Ogden Smith and M. Elizabeth Greene, the widow, better known as Bettie Allen, who were authorized by special order to carry on and work the plantation, etc.

The executors did not agree as to the disposition of the estate; Mrs. Allen and Collins filing a provisional account of their administration and praying for its approval, while Smith filed a separate account, prayed for its approval, and stated that he disagreed with his coexecutors in several particulars, and therefore filed an account in which his coexecutors did not concur. The principal dispute seems to have been over the cash left by the deceased, which Mrs. Allen claimed under the will, and Smith insisted belonged to the legal heirs who

were not cut off by the will. Mrs. Allen also claimed the crop of the Rienzi plantation, while Smith insisted it belonged to the legatees named in the will, to whom the realty was bequeathed. Opposition to the approval of both accounts were also filed by various parties interested in the estate, and for various reasons not necessary to be here enumerated. Judgment was delivered by the district court, June 10, 1895, settling the questions in dispute between the parties interested, and an appeal was taken to the Supreme Court of Louisiana, which rendered an opinion March 9, 1896, varying the decree of the court below to the extent of holding Mrs. Allen entitled to the net proceeds of the crop for the year 1894, but affirming it in other respects. 48 La. Ann. 1036. No reference, however, was made in the proceedings up to this time to the Government bounty upon sugar, amounting to $11,569.35, which was collected by Mrs. Allen, and which forms the subject of the present litigation.

This suit was initiated by a petition filed August 18, 1896, by Collins and Mrs. Allen for the approval of their final account, and of the proposed distribution of the undistributed assets, among which was the bounty granted by Congress for sugar produced on the Rienzi plantation for the year 1894, the portion received, $11,569.35, being all that the estate was entitled to out of the appropriation made by Congress for this purpose. "This amount the accountants proposed to turn over to Mrs. Bettie Allen as the owner of the net proceeds of the crop of 1894 on the Rienzi plantation, under the will of the testator and the decree of the Supreme Court."

Smith also filed a final account and an opposition to that of Mrs. Allen and Collins, particularly opposing giving any part of the bounty to Mrs. Allen, stating that "this money formed no part of the crop of 1894, is an unwilled asset, and must be distributed among the legal heirs who have not been cut off by the will, in accordance with the petitioner's final account filed herewith." These heirs, as stated by him in his account, were (1) the estate of Thomas H. Allen, Sen., a deceased brother of the testator, represented by J. Louis Aucoin, administrator; (2) two children of Mrs. Myra Turner, a deceased

sister; (3) five children of Mrs. Cynthia Smith, a deceased sister. Opposition was also filed by these several classes of heirs to the accounts of Mrs. Allen and Collins, and by certain other heirs who were not recognized by the executors, to that of Smith. Upon consideration of these various pleadings and the testimony introduced in connection therewith, the district court was of opinion that the bounty formed no part of the crop proper or the proceeds thereof. "Though based on the crop as a means of calculation, and conditioned on the production of the crop by the owner of the plantation, under certain rules, it was a pure gratuity from the Government;" that it did not therefore go to Mrs. Allen under the will, but to the heirs as an unwilled portion.

An appeal was taken to the Supreme Court by the Smith heirs, by Ogden Smith, executor, and by Mrs. Allen and Collins. That court first held that the bounty was a gratuity from the Government, though based upon an estimate of the crop as a means of calculation; that its allowance was conditioned on the fulfilment by the deceased of certain prerequisites; that the equitable claim of the deceased to the bounty had been created during his lifetime, the license obtained and all conditions precedent complied with; that it formed no part of the crops of 1894 or 1895, nor of their proceeds; that the executors did nothing but make the necessary proofs preparatory to its collection and receive payment of the money. "It must consequently be classed as an unwilled asset of the deceased, and not as part of the net proceeds of the crop of 1894, passing, under the will, to Mrs. Bettie Allen;" and that it must pass to the account of the legal heirs. 49 La. Ann. 1096. Upon a rehearing, applied for by both parties, that court modified its views, and adjudged that the bounty money in controversy be divided equally; that one half be distributed among the heirs as an unwilled portion, and that the other half be delivered to Mrs. Allen as legatee. From this decree both parties sued out a writ of error from this court. 49 La. Ann. 1096, 1112.

Mr. J. F. Pierson for Mrs. Allen. *Mr. Charlton R. Beattie* and *Mr. Taylor Beattie* filed a brief for same.

Mr. Albert P. Fenner for Aucoin. *Mr. Charles E. Fenner*, *Mr. Samuel Henderson, Jr.*, and *Mr. Charles Payne Fenner* were on the brief.

Mr. Henry Chiapella for Turner and Smith. *Mr. L. F. Suthon* filed a brief for Smith's heirs.

Mr. Justice Brown, after making the above statement, delivered the opinion of the court.

This case involves the question whether, under the act of Congress and the will of Richard H. Allen, the bounty of eight tenths of one per cent per pound, granted by Congress to the "producer" of sugar, was payable to his widow or to his heirs at law.

In the course of the litigation in the state courts a large number of questions were raised and decided which are not pertinent to this issue. So far as these questions depend upon the construction of state laws or of the will of Mr. Allen, they are beyond our cognizance. So far as the question of bounty depends upon the construction of that law, the decision of the Supreme Court is equally binding upon us; but so far as it depends upon the construction of the act of Congress awarding such bounty, it is subject to reëxamination here.

The course of legislation upon the subject of the sugar bounty is set forth at length in the opinion of this court in *United States* v. *Realty Co.*, 163 U. S. 427, and is briefly as follows:

By the tariff act of October 1, 1890, c. 1244, 26 Stat. 567, it was provided in paragraph 231 that on and after July 1, 1891, and until July 1, 1905, there should be paid "to the producer of sugar" a variable bounty, dependent upon polariscope tests, "under such rules and regulations as the Commissioner of Internal Revenue . . . shall prescribe." Then follow three paragraphs requiring the producer to give notice to the Commissioner of Internal Revenue of the place of production, the methods employed, and an estimate of the amount to be produced, together with an application for a license and an accompanying bond. The Commissioner was required to issue

this license, and to certify to the Secretary of the Treasury the amount of the bounty for which the Secretary was authorized to draw warrants on the Treasury. This act was repealed August 27, 1894, c. 349, 28 Stat. 509, while the crop of 1894 was in progress of growth, and about a fortnight before the death of Mr. Allen. But by a subsequent act of March 2, 1895, c. 189, 28 Stat. 910, 933, it was enacted that there should be paid to those "producers and manufacturers of sugar" who had complied with the provisions of the previous law a similar bounty upon sugar manufactured and produced by them previous to August 28, 1894, upon which no bounty had been previously paid. As the sugar in question in this case was not manufactured and produced prior to August 28, 1894, this provision was not applicable; but there was a further clause (under which the bounty in this case was paid) to the effect that there should be paid to "those producers who complied with the provisions" of the previous bounty law of 1890, by filing an application for license and bond thereunder required, prior to July 1, 1894, and who would have been entitled to receive a license as provided for in said act, a bounty of eight tenths of a cent per pound on the sugars actually manufactured and produced during that part of the fiscal year ending June 30, 1895, comprised in the period commencing August 20, 1894, and ending June 30, 1895, both days inclusive. The constitutionality of this act was affirmed by this court in *United States* v. *Realty Co.*, 163 U. S. 427.

At the time of Mr. Allen's death, September 19, 1894, and for many years prior thereto, he was the owner of a valuable sugar plantation, upon which he was engaged in the cultivation of cane and the manufacture of sugar. At this time there was standing in his fields a large crop of cane nearly ready for harvesting. In anticipation of this crop and of the manufacture of sugar therefrom, Mr. Allen had complied with all the provisions of the bounty law, and would, but for the repeal of the act of 1894, about one month prior to his death, have been entitled to collect the bounty. While, then, there was no bounty provision in force at the time of his death,

Congress, in March of the following year, enacted the bounty law above specified in fulfilment of its moral obligation to recompense those who had planted their cane upon the supposition that the bounty granted by the act of 1890 would be continued. The crop of cane upon his plantation at his death was harvested by his executors at the expense of the funds in their hands, which expense was deducted from the gross proceeds of the sugar.

The material provisions of his will are as follows:

1. "I give to my wife, Bettie Allen, one half on my Rienzi plantation and one half of all tools, mules, etc."

2. "My executors shall have from one to five years to sell and close up the estate."

3. "I will that my wife do have one half of everything belonging to Rienzi plantation, except the claim due me by the United States." (This was not the claim for bounty.)

4. "When it" (the plantation) "is sold half of all the proceeds, cash, notes, etc., is to belong to my wife, Bettie Allen." "As I fear property will be very low, I give my executors five years to work for a good price."

5. "In the meantime, that they are waiting to sell, the place can be rented or worked to pay all taxes and other charges, any over that to go to Mrs. Bettie Allen's credit."

Under the last clause of the will the executors, while awaiting a favorable opportunity to sell the plantation, were authorized to work it so as to pay all taxes and other charges, and to place the net proceeds to Mrs. Allen's credit. In construing this clause the Supreme Court of Louisiana held, upon the first hearing, 48 La. Ann. 1036, that Mistress Bettie was entitled to the net proceeds of the crop of the Rienzi plantation for the years 1894–1895. At the time of the filing of their first account by the executors, the crop of 1894 had not been sold by them, and the bounty granted by the act of March 2, 1895, had not been collected; consequently these two items were reserved to be afterwards accounted for by the executors. A further question, however, arose, and that was as to whether, in making up the net proceeds of the crop of 1894, the expenses incurred prior to the death of the tes-

tator should be deducted, as well as those incurred by the executors after the death of the testator. Both the district court and the Supreme Court were of opinion that the will contemplated and dealt with the renting or cultivation of the plantation after the death of the testator, and during such a period of time as it might remain under the administration of the executors pending a sale; that the date at which the expenses were to begin was evidently that at which the administration of the executors commenced, and only those incurred during their administration should be deducted from the proceeds of the crop, in order to ascertain the net proceeds thereof, including the expenses of making the sale. 49 La. Ann. 1096.

The Supreme Court was further of the opinion that the bounty money which was collected from the Government by the executors formed no part of the crops of 1894 and 1895, nor of their proceeds; that it was not *in esse* at the time those crops were grown and gathered; that the executors did nothing but make the necessary proofs preparatory to its collection and received payment of the money, and that it should therefore be classed as an unwilled asset of the deceased, and not as part of the net proceeds of the crop of 1894, passing, under the will, to Mrs. Allen. 49 La. Ann. 1096. But, upon a rehearing of this question, 49 La. Ann. 1112, the Supreme Court modified its views to a certain extent, treated the case as one depending upon the question who was the producer of the crop within the meaning of the act of Congress, and held that the producer of the cane was to be the first to receive the benefit of the bounty on complying with certain formalities; that the act placed the manufacturer of the sugar, in the matter of the bounty laws, in a secondary position; but that both production and manufacture were essential in order to enable the producer to recover the bounty; that to determine who was the producer it was necessary to consider the questions of title and ownership; that the crop had been planted and cultivated by Allen, and all expenses to the date of his death were paid from his funds; that he had earned the value of the crop on that date,

and had also earned a proportionate share of the bounty, not because the bounty was a part of the crop or its proceeds, but because it was granted to the producer of the crop; that in determining who was the producer, it could not exclude from consideration the labor applied under the direction of the owner of the plantation and the amount expended by him; that Mistress Bettie was not the exclusive producer, and was, therefore, not entitled to the whole bounty of the Government granted to the producer who produced the entire thing — a crop.

In its opinion upon the rehearing the Supreme Court adjudged that under the will of Allen the proceeds of the manufacture of sugar carried on after his death were for the account of Mrs. Allen and not for that of the estate, and that as a consequence of this construction Mrs. Allen was the manufacturer of the sugar made in the sugar house; that is to say, that whilst the executors may have manufactured the sugar they did so as the agents and for the account of Mrs. Allen, and she was therefore the producer of the sugar, in so far as the manufacture thereof was concerned. In delivering the opinion the court used the following language: "But there are other clauses of the will which, in our view, extend her right and show that she was the producer after the death of Mr. Allen. She paid all the expenses of the crop; she was to receive the proceeds under the terms of the will; indeed, she was the owner of the crop. She can well be considered, as we think, the producer. We desire it to be well understood that, in our opinion, the bounty money is no part of the crop or proceeds of the crop. The question was: Who was the owner and producer of the crop after the death of the testator?"

Having thus determined that under the will of Mr. Allen she, through the executors, was entitled to all the proceeds of the manufacture of sugar in the sugar house, the court proceeded to take away from Mrs. Allen a part of these proceeds upon the theory that, by the act of Congress, the bounty was given, not to the manufacturer of the sugar, but to the producer of the cane. In doing this it necessarily took from Mrs.

Allen a part of the bounty belonging to her as manufacturer of sugar under the act of Congress, and gave it to the legal heirs of Allen, because they had produced the cane from which the sugar had been manufactured. This, therefore, necessarily raised a Federal question, since it involved a construction of the act of Congress. The theory upon which the court did this is thus stated in the opinion: "The end of the bounty was to encourage the production of cane. It devolved upon us to determine by whom the cane was produced. In our judgment, after carefully reading the act, it is evident that the producer was to be the first to receive the benefit of the bounty. . . . The act (although it includes the manufacture of cane into sugar as one of the essentials) places the manufacture of the sugar in matter of the bounty scheme in a secondary position. In other words, in our view production was a first and manufacture a secondary consideration. Each, however, was essential in order to enable the producer to recover the bounty." The conclusion of the court was that, as the cost of cultivation was about equal to the cost of manufacture, the heirs at law were entitled to one half of the bounty and Mrs. Allen the other half.

The correctness of this construction is the question presented for our consideration. In the final production of sugar there are two distinct processes involved: (1) The raising of the cane; (2) the manufacture of the sugar from the cane so raised. If the cane be raised and the sugar be manufactured by the same person, he is beyond peradventure the "producer" of the sugar within the meaning of the statute; but if the cane be raised by one person and the sugar manufactured by another, which is the producer within the intent of the act? Or, if, as in this case, the cane be raised by the testator and he die while the crop is growing, and his executors reap it and convert it into sugar, which is the producer and which is entitled to the net proceeds of the crop? Conceding the question of what are the net proceeds of the crop is one determinable by the state courts alone, it is so commingled with the Federal question, who, under the act of Congress, was the producer of this crop, that it is scarcely possible to give a construction to the

one without also taking into consideration the bearing of the other. In this particular the case is not unlike that of *Briggs* v. *Walker*, 171 U. S. 466, in which, where certain moneys had been collected of the United States by Briggs' executors, this court assumed to determine who were the "legal representatives" of Briggs, and for whose benefit under the act of Congress the money had been collected.

It is quite evident that Allen himself was not the producer of the sugar. He had planted the crop of cane upon his own plantation. He had given notice and a bond to the Commissioner of Internal Revenue, and had applied for a license; but he had done nothing toward the production of the sugar at the time of his death beyond raising the cane, which certainly would not have entitled him to be considered a producer of the sugar. The word "producer" does not differ essentially in its legal aspects from the word "manufacturer," except that it is more commonly used to denote a person who raises agricultural crops and puts them in a condition for the market. In the case of sugar a process of strict manufacture is also involved in converting the cane into its final product. In a number of cases arising in this court under the revenue laws, it is said that the word "manufacture" is ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. That such product is often the result of several processes, each one of which is a separate and distinct manufacture, and usually receives a separate name; or, as stated in *Tide Water Oil Co.* v. *United States*, 171 U. S. 210, 216: "Raw materials may be and often are subjected to successive processes of manufacture, each one of which is complete in itself, and several of which may be required to make the final product. Thus logs are first manufactured into boards, planks, joists, scantling, etc., and then by entirely different processes are fashioned into boxes, furniture, doors, window sashes, trimmings and the thousand and one articles manufactured wholly or in part of wood. The steel spring of a watch is made ultimately from iron ore, but a large number of processes or transformations, each successive step in which is a distinct process of manufacture, and for

which the article so manufactured receives a different name." So the one who raises the cane is undoubtedly entitled to be considered the producer of the cane, but he is not the producer of the sugar. That appellation is reserved for him who turns out the finished product.

Neither can Mrs. Allen, nor the heirs of her husband, be said to be the direct producers of the sugar. Neither of them was the owner of the crop, which belonged to the plantation while growing, and would, as hereinafter stated, have passed to the purchaser, had a sale been made while the cane was still uncut. One half of the plantation passed under the will to Mistress Bettie, and the other half to the heirs of her husband.

There remain only the executors who, as between the estate of Allen and the Government, must be deemed the producers of the sugar. By the will they were authorized to rent or work the plantation as they pleased, to pay all taxes and other charges, and to put the residue to the credit of Mrs. Allen. The inchoate right to the bounty obtained by Allen before his death was a personal asset, which undoubtedly passed to the executors, who subsequently perfected that right and received the money.

Of course this money did not belong to the executors personally. They held it for the benefit of the estate and as agents for all persons interested therein; and the question as between the different heirs and legatee who shall be deemed the producer of the sugar remains to be settled. We are all of opinion that this question must be answered in favor of Mistress Bettie. If the cane when cut had been sold, the proceeds, over and above all expenses incurred since her husband's death, would have belonged to her, but not the bounty *eo nomine*, since the sugar had not been produced nor the bounty earned. But if such sale had been made, the cane undoubtedly would have fetched a price largely increased by the fact that the purchaser would receive a bounty upon the manufacture of the sugar. It is impossible to suppose that the price of the cane would not be seriously affected by the promise of the bounty, though perhaps not to the full amount of such

bounty. In this way Mrs. Allen would have received indirectly the benefit of the bounty, although she did not produce the sugar. On the other hand, if the cane be converted into sugar, it is equally just that she should receive the bounty. To deny it to her would place her in a worse position than she would have been in if the executors had sold the cane when it was cut. Whether she received it directly or indirectly makes no difference in principle.

The difficulty with the position of the Supreme Court of Louisiana is this: That if A should raise the cane and sell it to B, who manufactured it into sugar, A and B would be entitled to share in the bounty, although A may have received a much larger price for his cane than he would have received if there had been no bounty. Under the terms of the will Mistress Bettie was entitled to receive the entire proceeds of the crop, over and above the expenses, taxes and other charges; and whether these came from a price received from the cane increased by the offer of a bounty, or from the bounty actually received upon the production of the sugar, is wholly immaterial. To give to one who raises the cane and sells it to a manufacturer any part of the bounty, is in reality to give him a double bounty, since he must necessarily receive one in the enhanced price given for the cane. On the other hand, the manufacturer of the sugar is entitled to the proceeds of his sugar and to whatever the law has annexed thereto as an incident.

To return to the illustration of manufactures. Can it be possible that, if a bounty were offered for the manufacture of furniture, the manufacturer of the finished product would be obliged to share such bounty with the owner of the trees, or the manufacturer of the lumber cut from such trees, from which the furniture was made? Or, under similar circumstances, would the manufacturer of watches be compelled to share the bounty with the scores of prior manufacturers who contributed directly or indirectly to the production of the various articles of mechanism which go to make up the finished watch? To state this question is to answer it; and yet, if the producer of the cane be entitled to any portion of the

bounty, why are not the manufacturers of the constituent parts of a finished product?

The Supreme Court of Louisiana held that the widow was not chargeable with any part of the expense of the crop incurred prior to her husband's death, but that does not change her attitude to the sugar as its actual producer, nor deprive her of the benefit of the bounty; nor do we think that her right to such bounty is affected by the fact that the bounty law in existence when Allen applied for his license was repealed before his death, and another law passed in the following spring renewing the bounty applicable to the crop of the previous year. Such act was passed, as was held by this court, in *United States* v. *Realty Co.*, 163 U. S. 427, in recognition of a moral obligation to those who had put in their crop the previous year upon the faith of the bounty law then in existence. It was not so much a gift by the Government as a reward paid in consideration of expenses incurred by the planters upon the faith of the Government's promise to pay a bounty to the manufacturers and producers of sugar. As applied to this case, we think the act of 1895 should be construed as a continuation of the prior bounty. To say that it is an "unwilled asset" is practically to hold that it is a gift from the Government "without anything in the nature of a consideration," and that the amount of sugar produced is only to be considered as the measure of the bounty. This dissociates the bounty altogether from the motive which actuated Congress in granting it, and turns it into a mere donation of so much money, which it cannot be presumed to have made, even if it had the power. Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized. To grant a bounty irrespective altogether of these considerations would be an act of pure agrarianism; and to determine who is entitled to the benefit of the bounty is but little more than to determine who has rendered the consideration.

Opinion of the Court.

The act giving the supplementary bounty to replace that which should have been paid under the original act clearly did not contemplate giving a bounty to any other producer than the one designated by the original act. That act plainly gives the bounty only to the manufacturer and not to the grower. It follows, therefore, that the court, accepting its construction of the will as unquestionable, declared that although Mrs. Allen was a manufacturer of the sugar and the successor of Mr. Allen in that regard, was yet not entitled to the whole bounty, because, under its construction of the act of Congress, the grower of the cane was the primary person intended to be benefited by the act. As it is obvious that the person intended to be benefited by the act of Congress was the manufacturer, it follows that the Supreme Court of Louisiana, after finding that Mrs. Allen was the manufacturer, has taken from her a portion of the bounty to which she was entitled under the act of Congress, on the erroneous theory that that act gave the bounty to the grower of the cane instead of to the manufacturer.

We do not undertake to say that the crop of growing or maturing cane passed to Mrs. Allen at the date of her husband's death, since if the executors had chosen to sell the plantation the next day, this cane would have passed to the vendee. In this the common law and the civil law agree. (1 Washb. on Real Prop. 5th ed. 11; Code Napoleon, art. 520.) The same principle is incorporated in the Civil Code of Louisiana: "Art. 465. Standing crops and the fruits of trees not gathered, and trees before they are cut down, are likewise immovable, and are considered as part of the land to which they are attached. As soon as the crop is cut, and the fruits gathered, or the trees cut down, although not yet carried off, they are movables." But what she did own was the proceeds of the crop; the right in case the plantation was not sold to have this crop harvested for her benefit, and if manufactured into sugar, to have the proceeds of such sugar and all the incidents thereto placed to her credit.

For the reasons above given, we think she must be considered as the producer of the sugar, and that it is immaterial that she

was not the producer of the cane, since the two are distinct and separate articles of production.

It results from this that the decree of the Supreme Court of Louisiana must be reversed, and the cases remanded to that court for further proceedings in consonance with this opinion.